

**IN THE INCOME TAX APPELLATE TRIBUNAL
 DELHI BENCH “F”: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
 AND
 SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA no. 597/Del/2018
[Assessment Year: 2011-12]

Resurgere Mines & Minerals India Ltd., 15, Morvi House, 28/30, Goa Street, Ballard Estate, Mumbai-400038 PAN: AAACE0111B	<u>Vs</u>	ACIT, Range-15, New Delhi.
APPELLANT		RESPONDENT
Appellant by	None	
Respondent by	Sh. I.P. Bindra, CIT DR	
Date of hearing	12.07.2022	
Date of pronouncement	15.07.2022	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of learned CIT(Appeals)-7, New Delhi dated 14.12.2016 pertaining to the assessment year 2011-12. The assessee has raised following grounds of appeal:

- “1. On the facts and circumstances of the case the order passed by the learned CIT(A) is bad both in the eyes of law and on facts*
- 2. On the facts and circumstances of the case the learned CIT(A) has erred in passing the order without giving the assessee a proper and adequate opportunity of being heard in clear violation of principle of*

natural justice.

3. *On the facts and circumstances of the case the learned CIT(A) has erred in -confirming the order passed by the AO without any finding on the merits of the case.*

4. *On the facts and circumstances of the case the learned CIT(A) has erred both on acts and in law in confirming the action of the AO in rejecting the books of accounts despite the same having been made by the assessee as per law.*

5. *On the facts and circumstances of the case the CIT(A) has erred in confirming the addition of Rs. 18,33,53,700/- made by the AO by estimating an income tax at the rate of 3 per cent on the total turnover of Rs. 611.17 crores.*

6. *On the facts and circumstances of the case the learned CIT(A) has erred in confirming the disallowance of Rs. 72,52,000/- made by the AO on account of proportionate interest expenditure.*

7. (i) *On the facts and circumstances of the case the learned CIT(A) has erred in confirming the disallowance of Rs. 5,71,81,890/- made by the AO on account of proportionate interest payment.*

(ii) *That the disallowance was made by the AO despite the advances having been given out of business expediency.*

8. *On the facts and circumstances of the cases the learned CIT(A) has erred in confirming the addition of Rs. 1,25,62,073/- made by the AO on account of outstanding liabilities, invoking the provisions of Section 41(1) of the Act.*

9. *On the facts and circumstances of the case the learned CIT(A) has erred in confirming the addition of Rs. 1,11,63,000/- made by the AO on account of liabilities payable to overseas corporate bodies, invoking the provisions of Section 141 of the Act.*

10. *On the facts and circumstances of the case the learned CIT(A) has erred in confirming the addition of Rs. 8,62,00,000/- made by the AO on account of credit balance of Triveni Earth Movers returned back by the assessee.*

11. *On the facts and circumstances of the case the learned CIT(A) has erred in confirming the addition of Rs.5,44,70,000/- on account of depreciation of plant and machinery.*

12. *On the facts and circumstances of the case the learned CIT(A) has erred in confirming the addition of Rs. 11,14,03,000/- made by the AO on*

account of expenditure incurred in road development inside the mines during the year.

13. On the facts and circumstances of the case the learned CIT(A) has erred in confirming the disallowance of Rs, 43,54,300/- made by the AO invoking the provisions of Section 14 A of the Act.

14. On the facts and circumstances of the case the learned CIT(A) has erred in confirming the action of the AO in assessing the book profits under Section 115JB on Rs. 7,41,20,510/-.

15. On the facts and circumstances of the case the learned CIT(A) has erred in confirming the disallowance of Rs.43,54,300/- made by the AO under Section 14 A of the Act while computing the book profits under Section 115 JB.

16. That the appellant craves leave to add, amend or alter any of the grounds of appeal”.

2. Facts giving rise to the present appeal are that the assessee is a public limited company and is engaged in the business of extraction and processing of iron ore products. The assessee filed its return of income on 30.09.2011 at Nil income and claimed current year loss at Rs. 74,46,71,321/- under the normal provisions and at book profit of Rs. 7,51,20,510/- u/s 115 JB of the Income-tax Act, 1961 (in short “the Act”). The case of the assessee was selected for scrutiny assessment under CASS. In response to the statutory notices, learned authorized representative of the assessee attended the proceedings. While framing the assessment the Assessing Officer noticed that the auditors of the assessee company did not accept the accounts and did not sign the audit report. It was noticed that during the year under consideration the assessee declared sales of Rs. 611.17 crores against which material, production and operational expenses of Rs. 536.77 crores had been

booked. The turnover during the next financial year came to be zero due to halt in business. It is recorded by the Assessing Officer that the assessee was given various opportunities to file the details. Therefore, in the absence of details and the financial accounting results, the assessing officer proceeded to make assessment u/s 144 of the Act. Therefore the Assessing Officer computed the income as under:

		Amt. (in Rs.)
	Returned loss	744671321/-
Add: (i)	On a/c of 3% of Gross Sales (as discussed in Para-4)	183353700
(ii)	On account of proportionate intt. Exp. On loan given (as discussed in para-5)	7252000/-
(i)	On a/c of proportionate intt. Exp. On Interest free deposits (as discussed in para-6)	57182890/-
(ii)	On a/c of cessation of liability (as discussed in para-7)	12562073/-
(iii)	On a/c of mobilization advance (as discussed in para-8)	82600000/-
(iv)	On a/c of dep. On CWIP (as discussed in para-9)	54470000/-
(v)	On a/c of Road Development Exp. (as discussed in para-10)	111403000/-
(vi)	On a/c of o/s balance to OCB (as discussed in para 11)	11163000/-
(vii)	Disallowance u/s 14A <u>524340963/-</u> (on discussed in para-12)	<u>4354300/-</u>
	ASSESSED LOSS	220330358
	Income u/s 115JB	7,51,20,510/-
	Add: disallowance u/s 14A	4354300/-
	Assessed Book Profit u/s 115JB	7,94,74,810/-“

3. Aggrieved against the order of the Assessing officer the assessee preferred appeal before the learned CIT(Appeals), who after considering the submissions, dismissed the appeal and sustained the addition made by the Assessing officer. Aggrieved against it the assessee is in appeal before this Tribunal.

4. No one attended the proceedings at the time of hearing. The notice of hearing was directed to be served through the Department. The Income-tax Officer vide letter dated 31.5.2022 has intimated that notice of hearing was served through affixture. It is seen that since 16th February, 2021 despite having been given various opportunities no one attended the proceedings. Notices of hearing sent to the assessee have been returned by the postal authorities. Therefore, the appeal is taken up for hearing and is being decided on the basis of material available on record.

5. Ground nos. 1 & 2 are in respect of legality of the order and not providing adequate opportunity to the assessee. Learned CIT DR strongly supported the orders of the authorities below and submitted that there is no illegality into the orders of the authorities below. The assessee was given sufficient opportunity to represent its case.

6. We have heard the learned CIT DR and perused the material available on record. We find that the authorities below have given sufficient opportunities to the assessee. The assessee failed to comply with the directions given by the assessing

authority from time to time. Therefore, in the absence of compliance of such directions and not furnishing the evidences, the Assessing Officer was justified in proceeding and passing best judgment order u/s 144 of the Act. Ground nos. 1 & 2 are, therefore, rejected.

7. Apropos ground nos. 3 to 15, learned CIT DR heavily relied on the orders of the authorities below and submitted that the assessee has grossly failed to substantiate the claim. The auditors have also not signed the audit report. In the absence of the trading results the Assessing officer was justified in adopting the profit @ 3% of the gross turnover and thereby making addition of Rs. 18,33,53,700/-. Further, in respect of the proportionate disallowance of interest expenditure on the basis that there was difference between payment of interest and receiving of interest amounting to Rs. 72,52,000/-, he submitted that the assessee could not justify as to why the interest was charged at lower rate. Further, no interest was charged amounting to Rs. 5,71,82,890/-. He further submitted that in respect of old liabilities the Assessing Officer has rightly made addition of Rs. 1,25,62,073/- and also old liabilities against overseas corporate bodies of Rs. 1,11,63,000/-. Learned CIT DR further submitted that the Assessing officer rightly made addition on account of bogus liabilities in the books of account amounting to Rs. 8,62,00,000/-. He further submitted that the Assessing officer had given a finding of fact that the assessee had claimed bogus claim of depreciation and was

right in making addition of Rs. 5,44,70,000/- on account of bogus claim of depreciation. Learned CIT DR further submitted that the Assessing Officer has also given a finding of fact that the assessee had claimed bogus claim of expenditure and therefore was justified in making addition of Rs. 11,14,03,000/- on account of bogus claim of expenditure. Further, learned CIT DR submitted that the Assessing Officer was justified in invoking the provisions of Section 14A. Thereby he made addition of Rs. 43,54,300/-. He submitted that the assessee has not submitted any evidence in support of its claim. Therefore, the orders of the authorities below may be upheld.

8. We have heard the learned CIT DR and perused the material available on record. We find that no evidence has been placed on record by the assessee to substantiate its claim of expenses and depreciation as claimed before the Assessing Officer. It was incumbent upon the assessee to substantiate its claim by filing evidences. No explanation had been offered regarding reliability of the accounts. The Assessing Officer categorically recorded finding regarding unreliability of accounts on account of the fact that the auditors refused to put their signatures on the audit report. The assessee failed to justify its stand. In the absence of relevant evidences, we do not see any reason to interfere in the findings of the authorities below. We, therefore, uphold the orders of authorities below and reject the grounds raised by the assessee.

9. Ground no. 16 is general and needs no adjudication.

10. In the result, assessee's appeal is dismissed.

Order pronounced in open court on 15th July, 2022.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI

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