

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ, अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

ITA No.1880/Ahd/2019
Assessment Year : 2013-14

Gujarat Mineral Development Corporation Limited 6, Floor Khanij Bhavan 132, Ft.Ring Road B/h. Gandhi Labour Institute, Ahmedabad	Vs.	The Dy.CIT Circle-2(1)(1) Ahmedabad
PAN:AAACG 7987 P		

अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Bandish Soparkar, AR & Shri Parin Shah, AR
Revenue by :	Shri Alok Kumar, CIT-DR

सुनवाई की तारीख/Date of Hearing : 07/09/2022
घोषणा की तारीख /Date of Pronouncement: 19/10/2022

आदेश/ORDER

PER MS.SUCHITRA KAMBLE, JUDICIAL MEMBER

This appeal is filed by the Assessee against the order dated 23/10/2019 passed by the Commissioner of Income-tax (Appeals)-2, Ahmedabad ["CIT(A)" in short] for Assessment Year 2013-14.

2. The Ground of appeal is as under :-

"1. On facts & circumstances of the case, Your Appellant, most respectfully submits that the Ld.CIT(A) has erred in law and on facts by confirming the

addition in respect of Mine Closure expense of Rs.6,56,43,460/- by treating the same as deposit & not considering the same as actual payment of liability."

3. The assessee-company is engaged in the business of mining of minerals and generation of power. The return of income was filed on 26.09.2013 declaring total income of Rs. 878,87,82,502/-. Subsequently, revised return of income was filed by the assessee on 22.07.2014 declaring total income of Rs. 878,53,47,676/-. The case was selected for scrutiny. Further, the scrutiny assessment u/s 143(3) of the Act was completed on 17.03.2016 determining the total income of the assessee at Rs. 884,63,78,824/- making following additions/disallowances:

a)	Disallowance u/s 14A r.w.r. 8D	: Rs. 23,15,097/-
b)	Disallowance of Wrong claim of additional depreciation	: Rs. 53,83,105/-
c)	Disallowance of mining project expenses	: Rs.5,31,56,498/-
d)	Addition on a/c of difference in income as per books and 26AS	:Rs. 2,70,584/-

Aggrieved by the said order u/s 143(3) dated 17.03.2016, the assessee preferred an appeal before the CIT(A). The CIT(A) vide order dated 06.10.2016 partly allowed the appeal of the assessee, thereby deleting the disallowance of Rs. 23,15,907/- made u/s 14A r.w.r 8D and allowed depreciation @ 15% and accordingly allowed a relief of Rs. 34,60,568/- to the assessee out of the total disallowance made of Rs. 53,83,105/-. Further, order u/s 263 of the Income Tax Act, 1961 was passed by the Pr. CIT dated 27.03.2018 under which the order passed by the Assessing Officer u/s 143(3) of the Act dated 17.03.2016 was set aside on the issue which relates to the payment of Rs. 6,56,63,460/- u/s 43B of the Income Tax Act towards Mining Closure Fund. The order giving effect u/s 143(3) r.w.s. 263 of the Act was passed on 10.10.2018 thereby the Assessing Officer made disallowance u/s

14A r.w.r. 8D, wrong claim of additional depreciation and disallowance u/s 43B in respect of payment made towards mining closure fund. The total income assessed by the Assessing Officer was Rs. 890,62,66,619/-.

4. Being aggrieved by the Assessment Order dated 10.10.2018, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that as per the guidelines issued by Ministry of Coal, the assessee company is required to make provision towards Mine closure expenses on an annual basis. The assessee company used to make provision in this regard which is disallowed u/s 43B every year and as and when the actual expenditure is made, the same is claimed u/s 43B. The assessee has been consistently applying the provisions of Section 43B of the Income Tax Act on such payments. Even in Tax Audit report, the Tax Auditor of the company has been covering this expenses u/s 43B of the Income Tax Act, 1961. Even during the year under consideration, the provision of Rs. 49,60,39,000/- made in the books of accounts, has been disallowed in the statement of total income by the assessee company by applying the provisions of Section 43B of the Income Tax Act, 1961. The Ld. AR further submitted that the Assessing Officer concluded that the expenditure claimed by the assessee amounting to Rs. 6,56,63,460/- is not in the nature of expenditure but is in the nature of deposit. The Ld. AR submitted that the assessee produced the ledger account of said expenditure vide submissions dated 03.10.2018 which showed the voucher wise details of expenditure incurred during the assessment proceedings. Therefore, the Ld. AR submitted that since the assessee claimed the actual expenditure on

payment basis under Section 43B as duly certified by the Tax Auditor, the addition made by the Assessing Officer is unwarranted and deserves to be deleted. The Ld. AR relied upon the decision of the Hon'ble Rajasthan High Court in case of Pr. CIT vs. M/s Rajasthan State Mines and Mineral Ltd. (D.B. Income Tax Appeal No. 39/2019 order dated 29.05.2019). In alternate, the Ld. AR submitted that even if the Tribunal is of the view that provision of Section 43B are not applicable to mine Closure Expense than the amount or provision of for mine closure of Rs.49,60,39,000/- already disallowed by the assessee company u/s 43B of the Act in its computation of income during A.Y. 2013-14, should be allowed as expenses as the same has been made on accrual basis as per the Guidelines issued by Ministry of Coal and same relates to the business of the assessee.

6. The Ld. DR submitted that the deposit of Rs. 6,56,63,460/- in Mining Closure Fund is not in the nature of tax, duty, cess etc. or any other sum payable as provided in Section 43B of the Act. The same rightly disallowed by the Assessing Officer and confirmed by the CIT(A). The Ld. DR relied upon the Assessment Order and the order of the CIT(A). The Ld. DR further submitted that the assessee's claim that entire provision made should be allowed as deduction on accrual basis is also not proper as the provision is contingent in nature and assessee itself added the same in the total income for the same reason. Thus, the Ld. DR prayed that the appeal be dismissed.

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee company made provision in Mining Closure Fund as per the guidelines issued by the Ministry of Coal which is mandatory to each mining company. It is not

disputed fact that the assessee made claim u/s 43B every year as and when the actual expenditure is made. The department in the past has accepted this position. The said provision is mandatory and the assessee has made the said provision in books of accounts following the guidelines of the Ministry of Coal. The issue of ascertaining the said provision is covered in favour of the assessee by the decision of the Hon'ble Rajasthan High Court in case of Rajasthan state Mines and Mineral Ltd. (supra) as per the contentions of the Ld. AR. But the observation of the CIT(A) that the said Mining Closure Funds is not in the nature of tax, duty, cess, fee etc. as per Section 43B, appears to be justifiable as the guideline of Ministry of Coal has given the procedure and time period for the closure expenses to be incurred by the coal mine owners who are operating coal mines without the approval of any Mine Closure Plan. Thus, Section 43B claim is not applicable in assessee's case. Thus, the CIT(A) was right in the said context. As regards the decision of the Hon'ble Rajasthan High Court the same is in the context of Section 37 claim made by the assessee therein. Thus, the said argument of the Ld. AR is rejected.

8. As regard to alternate argument that "even if the Tribunal is of the view that provision of Section 43B are not applicable to mine Closure Expense than the amount or provision of for mine closure of Rs. 49,60,39,000/- already disallowed by the assessee company u/s 43B of the Act in its computation of income during A.Y. 2013-14, should be allowed as expenses as the same has been made on accrual basis as per the Guidelines issued by Ministry of Coal and same relates to the business of the assessee" appears to be correct. Since the assessee has to make provision for mine

closure as the requirement of the Mine owners, the same should be allowed as expenses. Thus, appeal of the assessee is partly allowed.

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

Order pronounced in the Court on 19th October, 2022 at Ahmedabad.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad, Dated 19/10/2022

टी.सी.नायर, व.नि.स।T.C. NAIR, SY. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-2, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad