

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 386/JP/2022
निर्धारण वर्ष / Assessment Years : 2012-13

Akhand Associates Saini Mandir Opp. S. K. Collage, Shekhpura Road, Sikar	बनाम Vs.	ITO Ward -1, Sikar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AASFA 7936 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Sandeep Jhanwar (C.A.)
राजस्व की ओर से / Revenue by : Smt. Monisha Chaudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 14/03/2023
उदघोषणा की तारीख / Date of Pronouncement : 23/03/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee and is arising out of the order of the National Faceless Appeal Centre, Delhi dated 29/09/2022 [here in after (Ld. NFAC/CIT(A))] for assessment year 2012-13, which in turn arise from the order of the ITO Ward 1, Sikar dated 29.12.2017.

2. The assessee has marched this appeal on the following grounds:-

“1. Under the facts and circumstances of the case, the Id. CIT(A) has erred in not quashing the reopening of the case and the consequential assessment order passed under section 147/143(3), which is bad in law.

2. Under the facts & circumstances of the case the Id. CIT(A) has erred in confirming the addition of Rs. 6,74,000/- made by the Assessing Officer, Ward 1, Sikar by treating said amount as capital expenditure/loss instead of revenue expenditure which was deposited by assessee to department of mines for taking contract of royalty recovery and added the same in total income of the assessee.

3. The assessee craves right to add, alter or amend any of the grounds of appeal.”

3. The fact as culled out from the records is that as based on the information available with the Department, the proceedings u/s 147 of the IT. Act, 1961 were initiated after recording reasons by the AO. Notice u/s 148 of the Act was issued on 27.02.2017 and duly served. The reassessment u/s 143(3)/147 was completed on 29.12.2017 at an assessed income of Rs. 1,09,500/- against returned loss of Rs. 5,64,503/-. While completing the assessment the Id. AO made an addition of Rs. 6,74,000/- being the amount paid to mining department, while doing so Id. AO stated that as the assessee has not earned any income against this payment and thus, the said some was treated as capital expenditure.

4. Being aggrieved, the assessee carried the matter in appeal before the Id CIT(A) for the addition made by the Id. AO. The

relevant findings is recorded by the Id. CIT(A) in para 6 of his order and the same is reiterated here in below:

“6. I have considered the written submission of the appellant and the order of AO in detail. Having respectfully considered the judgments of various courts, in this case, the fact remains that the appellant is trying to make it a case of foreseeable losses whereas no such precedent or subsequent year contract is made available in the appellant's case. The appellant merely deposited a sum and it is not known whether the same was subsequently refunded or adjusted against subsequent contracts, if any, with the mining department. There is also no detail of forfeiture of amount by the Department of Mines. There is no copy of contract and the reply of the appellant after several opportunities appears to be vague. The primary onus was on the appellant to explain the valid reasons for not making the addition/disallowance of Rs.6,74,000/- as capital expenditure. In the given circumstances, both at the assessment stage despite opportunities provided to furnish satisfactory supporting documents and now at the appellate stage, the appellant chose to remain silent and has failed to discharge the onus of justifying the claim of capital expenditure of Rs.6,74,000/- with any documentary evidence, thus, it is held that the AO reasonably made the disallowance. The same is hereby confirmed. Ground No. 2 of the appeal is dismissed.”

5. As the assessee did not find any favour from the appeal so filed before the Id. CIT(A), this appeal is filed before us challenging the finding of the lower authorities, as per the grounds raised by the assessee at para 2 above. In support of the grounds so raised the Id. AR of the assessee submitted an application praying to admit the additional evidence. The prayer of the assessee is reiterated here in below:

“The present appeal is filed against the appeal order passed u/s 250 of the Income Tax Act, 1961 (the Act) dated 29.09.2022. In the grounds of appeal, three grounds of appeal were raised, of which ground No.1 & 2

are against the specific addition made and ground no. 3 is general in nature.

In ground no. 1 & 2 of the appeal, the appellant has challenged the addition of Rs.6,74,000/- in respect of disallowance of loss by treating it to be capital loss in nature in the year under consideration. The loss represents forfeiture of pre deposit amount for not commencing royalty collection contract.

We would like to mention here that the assessee could not submit the copy of agreement for collection of royalty before lower authorities. The Id. CIT(A) confirmed the addition of Id. AO by mentioning that the assessee has not produced copy of contract with mining department. Therefore it is now thought fit to submit copy of agreement for collection of royalty as additional evidences vide this letter. The said additional evidences are necessary to understand the exact facts and circumstances of the case and its lawful adjudication. We thus request your Honour to kindly admit the same and oblige.

Power to admit additional evidence

Further, it is settled principle of law that your Honour has the power to admit additional evidence filed by the appellant, if the appellant has sufficient cause for not producing the same during assessment proceedings, to advance the cause of justice.

Reliance in this regard is placed on the following:

- Hon'ble Madhya Pradesh High Court in case of CIT vs. Shiya Dawoodi Bohara Jamat [2008] 170 Taxman 293 held that Whether every appellant in appeal has a right to file additional evidence in support of its case and if appellate authority feels that additional evidence is material for deciding controversy involved in that case, then in interest of justice, same can always be allowed to be filed even at appellate stage - Held, yes.
- Hon'ble Delhi High Court in the case of Chandra Kant Chanubhai Patel v. CIT [2011] (13 taxmann.com 131) held that where fresh evidence produced by appellant was without any blemish, then in order to advance cause of justice, evidence was to be admitted.

Thus, in view of the above, we request your Honour to kindly admit the additional evidence produced by the appellant as it is well within the jurisdiction of your Honour.

We may further submit that this additional evidence goes to the root of the matter and is necessary to examine the issue. Thus, it is requested to admit the same in the interest of natural justice.”

Since, the agreement is in addition to the challan of payment made by the assessee and as the Id. CIT(A) while rendering the judgment

hold a view that the assessee has not submitted copy of contract / agreement vide para 6 of his order the same is produced in support of the challan of payment already placed before the lower authority. In addition to the above contention / evidences the Id. AR of the assessee also submitted that the cost of executing the collection of royalty was higher then the cost of paying the fees to the state government. The Id. AR of the assessee further submitted that the Id. AO has called for the details from the mining department u/s. 133(6) of the Act which has also been submitted by the mining department vide letter dated 16.11.2019. All these evidences makes it clear that the assessee has paid the royalty collection contract amount to state government which is not in the nature of capital or in the enduring benefit to the assessee. The expenditure thus, is merely a commitment fees which is not receivable in future or not adjustable in future benefit. Therefore, the said amount paid is nothing but a business decision to reduce the loss by paying the commitment fees rather incurring more expenditure in arranging the collection work at the site. Based on these set of argument the Id. AR submitted that the finding of the lower authorities are against the facts placed on record. To support the contentions so raised Id. AR of the assessee submitted following documents:

S. No.	Particular	Page No.
1	Copy of royalty collection agreement entered into between assessee and department of Mines and Geology, Rajasthan	01-05
2	Copy of Ledger account Royalty Installment, Balia	06
3	Copy of acknowledgement receipts of installment on various dates	07-11
4	Copy of bank statement showing payment of installment on various dates	12-13
5	Copy of cash book showing payment of installment on various dates.	14-15

6. The Id DR is heard who has relied on the findings of the lower authorities. The Id. Sr. Dr. also submitted that the assessee has not appeared before the Id. CIT(A) even though the opportunity were granted to the assessee and has not submitted the documents required so the prayer for admission of additional evidence is also not appropriate. The assessee has not clarified before the lower authority about the terms of the contract of payment of the Royalty. Based on these arguments she has supported the orders of the lower authority.

7. We have heard the rival contentions and perused the material placed on record. The Id. AR of the assessee submitted the copy of the challans paid to the mining department. The head under which

the money paid is neither refundable to the assessee nor adjustable against the future receipt to the assessee. Even the mining department has confirmed the receipt of the payment challan by the assessee and this information was collected by the AO u/s. 133(6) of the Act. The Id. CIT(A) has contended that the expenditure incurred by the assessee is capital expenditure. The observation so arrived is without any basis or reasoning by the Id. CIT(A). The term capital expenditures are typically one-time large purchases of fixed assets that will be used for revenue generation over a longer period or expenditure incurred for enduring benefit to the assessee. Whereas Revenue expenditures are typically referred to as ongoing operating expenses, which are short-term expenses that are used in running the daily business operations. Thus, based on these basic difference of expenditure and on careful examination of the challans placed on record we are of the considered view that the expenditure incurred by the assessee are not in nature of any enduring benefit to the assessee but in fact days to day routine expenditure in the nature of revenue expenditure. Based on these observations we vacate the addition of Rs.6,74,000/-.

In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 23/03/2023

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 23/03/2023

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- M/s Akhand Associates, Sikar
2. प्रत्यर्थी / The Respondent- ITO, Ward- 1, Sikar
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 386/JP/2022 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar