

IN THE INCOME TAX APPELLATE TRIBUNAL

PANAJI BENCH : PANAJI

(THROUGH VIRTUAL HEARING)

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND

SHRI G.D. PADMAHSHALI, ACCOUNTANT MEMBER

ITA.Nos.43 & 44/PAN./2019

Assessment Years 2013-2014 & 2015-2016

M/s. R.S. Shetye & Bros, Flat No.14, 1 <sup>st</sup> Floor, Trionara Apartments, Near Municipal Market, Panaji, Goa – 403001 PAN AABFR9785N	vs.	The Income Tax Officer, Ward-1(3), “Aaykar Bhavan”, Plot No.5, EDC Complex, Patto Plaza, Panaji Goa PIN – 403 001.
(Appellant)		(Respondent)

For Assessee :	Shri Vinod Totekar, C.A.
For Revenue :	Shri N. Shrikanth

Date of Hearing :	10.07.2023
Date of Pronouncement :	12.07.2023

**ORDER**

**PER BENCH :**

These assessee’s twin appeals ITA.Nos. 43 & 44/PAN./2019, for assessment years 2013-2014 and 2015-2016, arise against the CIT(A)-1, Panaji’s separate orders dated 10.01.2019 and 24.01.2019 passed in case Nos.CIT(A), PNJ-1/10496/2017-18 and CIT(A), PNJ-1/11070/2015-16, respectively, involving proceedings u/s.143(3) of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties at length. Case files perused.

2. We come to the “lead” assessment year 2013-14 involving the assessee’s appeal ITA.No.43/PAN./2019 raising the following substantive grounds :

1. "On the facts and circumstances of the case, the learned CIT(A), Panaji-1 and the AO, erred in disallowing the 50% of the expenses incurred on maintaining the mines to the extent of Rs.1,99,52,610/-
2. On the facts and circumstances of the case, the CIT(A), Panaji-1 has passed an order without going into the order of the Supreme Court and Government Authorities.
3. On the facts and circumstances of the case to leave, to add, alter, amend, modify and correct the grounds of appeal at or before the time of hearing."

3. Both the parties next invited our attention to the CIT(A)'s detailed discussion upholding the Assessing Officer's action as under :

3. The brief facts of the case are that the Appellant is a firm, has filed its return of income on 30.09.2013 for the A.Y. 2013-14 declaring nil total income. The assessment order u/s. 143(3) is completed on 29.02.2016 after disallowing the expenses to the extent of Rs. 2,78,93,565/-. Aggrieved by the order appellant has filed the present appeal.

4. The appellant has taken following grounds of appeal:

"1. On the facts and circumstances of the case, the learned ITO, W-1(3), Panaji erred in disallowing the expenses to the extent of Rs.2,78,93,565/-.

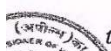
2. On the facts and circumstances of the case to leave, to add, alter, amend, modify and correct the grounds of appeal at or before the time of hearing".

5. The appellant has presented the statement of facts as under:

Your appellant is a partnership concern carrying on the business of mining of iron ore, i.e. extraction and selling. Your appellant had filed the return of income on 30.09.2013 declaring a loss of (Rs. -6,69,81,932/-). The learned ITO, W-1(3), Panaji has assessed a loss at (Rs. -3,95,96,680/-). The learned AO has disallowed expenses to the extent of Rs.2,78,93,565/- being the 50% of total expenditure incurred during the year amounting to 5,57,87,131/- the details of which are as under:

De-watering expenses	Rs. 2,44,84,450.00
Machinery hire charges	Rs. 25,20,418.00
Dumper charges	Rs. 9,99,446.00
Vehicle Hire charges	Rs. 5,05,924.00
Freight loading and unloading	Rs. 30,000.00
Water spraying charges	Rs. 12,15,493.00
Security charges	Rs. 2,54,69,910.00
Afforestation expenses	Rs. 1,50,000.00
Crop Compensation	Rs. 36,366.00
Environmental Monitoring expenses	Rs. 15,94,164.00
Advertisement and publicity	Rs. 1,45,809.00
Depreciation on plant and machinery	<u>Rs. 70,151.00</u>
<b>Total</b>	<b><u>Rs.5,57,87,131.00</u></b>
<b>50% of the above</b>	<b>Rs.2,78,93,565.00</b>

Your appellant was carrying on mining activity for more than 50 years and this activity came to a abrupt halt due to Supreme Court and State Government



R. S. Shetye And Bros.  
A.Y.2013-14

ban on mining activity. The turn of events in the mining sector till date is as under:

**September 7, 2012**

Shah Commission report on illegal mining tabled in Parliament

**September 10, 2012**

State Government suspends iron ore operations

**September 14, 2012**

MoEF keeps environment clearance in abeyance

**September 25, 2012**

Goa Foundation approaches Supreme Court

**October 5, 2012**

Supreme Court bans iron ore activities

**April 21, 2014**

Apex court lifts ban on iron ore activities in Goa

**March 21, 2015**

MoEF revokes suspension of environmental clearances

**November 2014 to January 2015**

Mines department renews mining leases

**July 10, 2015**

Goa State Pollution Control Board grants consent to operate

**July 20, 2015**

Indian bureau of mines starts approving mining plans

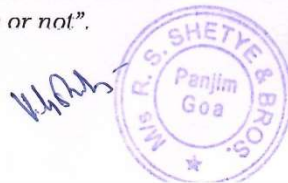
**August 10, 2015**

Vedanta begins iron ore operation at Codli mines

**October 19, 2015**

Vedanta Exports first consignment of 88,000 MT iron ore to China.

Your appellant, for that matter whole mining industry in Goa never anticipated that Supreme Court will take so long to decide the illegality in mining. Since your appellant was never involved in illegal mining activity and holding valid licenses and permissions was expected to commence the activity immediately after the monsoon of 2012 or thereafter as and when the mining ban is lifted. Your appellant had employed more than 200 employees whose family was dependent on the income of the sole bread earner could not be sacked overnight due to unfortunate decision of the State Government and the Supreme Court. The expenditure incurred are absolutely required to keep the business going, which have been incurred in the past and will be incurred in future irrespective of whether there is mining revenue or not".



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6. The appellant vide letter dated 13.12.2018 has stated as under:

Your appellant is a partnership concern carrying on the business of mining of iron ore, i.e extraction and selling. Your appellant had filed the return of income on 30.09.2013 declaring a loss of (Rs. -6,69,81,932/-). The learned ITO, W-1(3), Panaji has assessed a loss at (Rs. -3,95,96,680/-). The learned AO has disallowed expenses to the extent of Rs.2,78,93,565/- being the 50% of total expenditure incurred during the year amounting to 5,57,87,131/- the details of which are as under:

De-watering expenses	Rs.	2,44,84,450.00
Machinery hire charges	Rs.	25,20,418.00
Dumper charges	Rs.	9,99,446.00
Vehicle Hire charges	Rs.	5,05,924.00
Freight loading and unloading	Rs.	30,000.00
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Afforestation expenses	Rs.	1,50,000.00
Crop Compensation	Rs.	36,366.00
Environmental Monitoring expenses	Rs.	15,94,164.00
Advertisement and publicity	Rs.	1,45,809.00
Depreciation on plant and machinery	Rs.	70,151.00
<b>Total</b>	Rs.	<b>5,57,87,131.00</b>
<b>50% of the above</b>	Rs.	<b>2,78,93,565.00</b>

**GROUND NO.1**

**On the facts and circumstances of the case, the learned ITO, W-1(3), Panaji erred in disallowing the expenses to the extent of Rs. 2,78,93,565/-**

Your appellant was carrying on mining activity for more than 50 years and this activity came to an abrupt halt due to Supreme Court and State Government ban on mining activity. The turn of events in the mining sector till date is as under:

**September 7, 2012**

Shah Commission report on illegal mining tabled in Parliament

**September 10, 2012**

State Government suspends iron ore operations

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Your appellant, for that matter whole mining industry in Goa never anticipated that Supreme Court will take so long to decide the illegality in mining. Since your appellant was never involved in illegal mining activity and holding valid licenses and permissions was expected to commence the activity immediately after the monsoon of 2012 or thereafter as and when the mining ban is lifted. Your appellant had employed more than 200 employees whose families were dependent on the income of the sole bread earner, could not be sacked overnight due to unfortunate decision of the State Government and the Supreme Court. The expenditure incurred are absolutely required to keep the business going, which have been incurred in the past and will be incurred in future irrespective of whether there is mining revenue or not.

As per the details given above the major expenditure is on dewatering, environmental maintenance and security charges besides other expenses which are minimum expenses to be carried out. The dewatering is required for the safety of the villagers living around and safety of the adjoining mining leases. Your appellant is enclosing herewith direction of the Government of India, Ministry of Labour & Employment, Director General of Mines Safety letters dated 15.04.2013, 11.07.2013 and Supreme Court order dated 19.03.2013. From the documents cited above it is very clear that the expenditure incurred for dewatering and environment maintenance is Government and Court directed and hence is allowable under the law.

In view of the above the disallowance may kindly be deleted.

7. Only one substantive ground has been raised in appeal. It was found by the AO that although there is no income, the assessee firm has debited huge expenses of Rs. 5.58 crores. These expenses were capitalized and added to WIP.



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A.Y.2013-14

During the course of assessment proceedings the appellant firm was asked explain why the said expenses should not be disallowed. In response, it was stated that the major expense comprised de-watering, which was a mandatory activity to be undertaken by mine owners, irrespective of whether there is mining activity or not. This is a part of safety and environmental protection and management measure as directed by the Directorate of mines and safety of Goa. Also expenses pertaining to hire of machinery, safety and security and continue hiring of staff cannot be avoided whether or not mining is done during the year, it was stated. The AO disallowed this logic as he found that in earlier years these expenses were claimed as revenue expenses; also, and more importantly, it was found that the de-watering charges and machinery hire charges were much less in earlier years.

8. As regards the claim of the AO that the expenses were claimed as revenue expenditure earlier but is now capitalized, there is no error on part of the assessee because when there was income to offset this expenditure it was being claimed as revenue; and now when there is no income it is being carried forward. Thus this claim of the AO is not valid.

9. However the claim of the Assessing Officer that dewatering charges was only to the tune of Rs. 26.86 lakhs and machinery hire charges were only 1.66 lakhs and security charges nil in F.Y. 2012 whereas in the current year it has been claimed that 2.45 crores, 25.20 lakhs and 2.55 crores respectively raises strong doubt. It is claimed by the AO that the assessee firm could not substantiate the huge expenses claimed, as compared to the earlier years. Therefore 50% of the total expenses of Rs. 5,57,87,131/- being Rs. 2,78,93,565/- has been disallowed as unreasonable/excessive expenditure.

10. As discussed in the preceding paragraphs there is a manifold hike in expenditure even as the income has plummeted to zero. The assessee firm has not been able to substantiate the huge spike in expenditure despite having no income at all. When income falls, the expenditure normally falls; but it can in no case increase manifold.

11. Since there is no explanation, I do not find any reason for interfering with the order of the AO. I therefore refuse to interfere with the assessment order passed by the AO.

4. It is in this factual backdrop that both the learned representatives reiterated their respective stands before us against and in support of lower authorities action disallowing the assessee's direct/indirect expenses @ 50%, coming to Rs.2,78,93,565/- in the "lead" assessment year 2013-2014.

5. We have given our thoughtful consideration to the foregoing rival stands and find no merit in either parties vehement contentions in entirety. This is for the precise reason

that neither the assessee has been able to explain the alleged unreasonable increase in various heads of expenditure involving de-watering, machinery hire, dumper, vehicle hire charges, freight, water-spraying, security charges along with afforestation, crop compensation, environmental monitoring, advertisement and miscellaneous expenses vis-à-vis preceding assessment years respective heads nor the department could categorically dispute the same in principle as the learned lower authorities have already accepted 50% component thereof as incurred wholly and exclusively for the purpose of business u/sec.37(1) of the Act. This is indeed coupled with the fact that the learned lower authorities have nowhere considered the crucial aspect of the assessee's profit element going abnormally higher by virtue of 50% disallowance of the impugned expenses. Faced with the situation and in light of foregoing relevant facts, we deem it appropriate that a *lump sum* disallowance @ 25% than that in issue @ 50% would be just and proper with a rider that the same shall not be treated as a precedent in any other assessment year except those involved in the instant common order. Learned Assessing Officer shall accordingly frame his consequential computation as per law. The assessee's "lead" appeal ITA.No.43/PAN./2019 is partly accepted in very terms.

6. Next comes the assessee's appeal ITA.No.44/PAN./2019 wherein the disallowance @ 50% comes to Rs.2,78,93,565/- which is partly deleted in very terms.

7. These assessee's twin appeals are allowed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 12.07.2023.

Sd/-  
[G.D. PADMAHSHALI]  
ACCOUNTANT MEMBER

Sd/-  
[SATBEER SINGH GODARA]  
JUDICIAL MEMBER

Pune, Dated 12<sup>th</sup> July, 2023

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The Ld. CIT(A)-1, Panaji.
4.	The CIT concerned
5.	D.R. ITAT, Panaji Bench, Panaji
6.	Guard File.

//By Order//

Assistant Registrar, ITAT, Pune Benches,  
Pune.