

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "A", MUMBAI  
BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER  
**ITA No. 1941/Mum/2023 (A.Y.2017-18)**

**DCIT –6(1) (1),**

R. No. 502, 5<sup>th</sup> floor,

Aayakar Bhavan,

M. K. Road

Mumbai-400 020

..... Appellant

Vs.

**M/s Armstrong Energy Pvt. Ltd.**

5<sup>th</sup> floor, Militia Apartment,

Mathar Pakhadi road,

Mazgaon, Mumbai-400 030

PAN – AAFCA3807R

..... Respondent

Appellant by : Shri Raghuveer Madanappa, Ld. DR

Respondent by : Shri Mahesh Saboo, Ld. AR

Date of hearing : 26/09/2023

Date of pronouncement : 12/10/2023

**ORDER**

**PER GAGAN GOYAL, A.M:**

This appeal by revenue is directed against the order of National Faceless Appeal Centre (for short "NFAC") dated 22.03.2023 u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2017-18. The revenue has raised the following grounds (revised) of appeal:-

- 1. Whether on the facts and in circumstances of case and in law, the Ld CIT(A) was justified in deleting the disallowance of Rs. 2,04,00,869/- being depreciation claimed by the assessee on its block of assets and plant and machinery, when there is no business activity?.*
- 2. The Appellant craves leaves to amend or alter any ground or to submit additional new ground which may be necessary?.*

2. The brief facts of the case are that the assessee is a company filed its return of income on 09.10.2017 declaring total income at Rs. NIL and claimed a loss of Rs. 1,54,17,925/-. Assessee Company is engaged in the business of production of electricity from waste of sugarcane/molasses and business of investments also. Case of the assessee was selected for scrutiny under CASS. It was observed by AO during the assessment proceedings that during the year under consideration there is no business is being carried out by the assessee, except having some dividend income amounting to Rs. 13,650/- and that is too exempt u/s. 10(38) of the Act. During the year under consideration total expenses in P&L claimed by the assessee was to the tune of Rs. 2,33,15,237/-, out of which depreciation alone was Rs. 2,04,00,869/-.

3. AO vide his order dated: 30.11.2019, disallowed the claim of depreciation on the ground that no business was being carried out by the assessee, hence not eligible for the same and added back to the income of the assessee. Assessee being aggrieved with the same preferred an appeal before the Ld. CIT (A), who in turn allowed the appeal of the assessee and set-aside the order of AO. Now Revenue being not satisfied with this order of Ld. CIT (A) preferred the present appeal before us. We have gone through the order of AO, order of Ld. CIT (A) and submissions of the assessee and grounds raised by the revenue.

4. Before going into the merits of the case, it is preferable to address written submissions of the assessee, wherein assessee challenged the appeal's admission itself by virtue of CBDT Circular No. 17/2019, Dated: 08.08.2019 as under:

***“FURTHER ENHANCEMENT OF MONETARY LIMITS FOR FILING OF APPEALS BY THE DEPARTMENT BEFORE INCOME TAX APPELLATE TRIBUNAL, HIGH COURTS AND SLPs/APPEALS BEFORE SUPREME COURT - AMENDMENT IN CIRCULAR NO. 3/2018, DATED 11-7-2018 - MEASURES FOR REDUCING LITIGATION CIRCULAR NO. 17/2019 [F.NO. 279/MISC.142/2007-ITJ (PT.)], DATED 8-8-2019.*** Reference is invited to the [Circular No. 3 of 2018, dated 11-7-2018](#) (the Circular) of Central Board of Direct Taxes (the Board) and its amendment dated 20th August, 2018 vide which monetary limits for filing of income tax appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court have been specified. Representation has also been received that an anomaly in the said circular at para 5 may be removed.

**2.** As a step towards further management of litigation, it has been decided by the Board that monetary limits for filing of appeals in income-tax cases be enhanced further through amendment in Para 3 of the Circular mentioned above and accordingly, the table for monetary limits specified in Para 3 of the Circular shall read as follows:

Sl. No.	Appeals/SLPs in Income-tax matters	Monetary Limit (Rs.)
1.	Before Appellate Tribunal	50, 00,000
2.	Before High Court	1,00.00.000
3.	Before Supreme Court	2.00,00,000

**3.** Further, with a view to provide parity in filing of appeals in scenarios where separate order is passed by higher appellate authorities for each assessment year vis-a-vis where composite order for more than one assessment years is passed, para 5 of the circular is substituted by the following para:

*"5. The Assessing Officer shall calculate the tax effect separately for every assessment year in respect of the disputed issues in the case of every assessee. If in the case of an assessee, the disputed issues arise in more than one assessment year, appeal can be filed in respect of such assessment year or years in which the tax effect in respect of the disputed issues exceeds the monetary limit specified in para 3. No appeal shall be filed in respect of an assessment year or years in which the tax*

*effect is less than the monetary limit specified in para 3. Further, even in the case of composite order of any High Court or appellate authority which involves more than one assessment year and common issues in more than one assessment year, no appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified in para 3. In case where a composite order/ judgement involves more than one assessee. Each assessee shall be dealt with separately."*

**4.** *The said modifications shall come into effect from the date of issue of this Circular.*

**5.** *The same may be brought to the notice of all concerned.*

**6.** *This, issues under section 268A of the Income-tax Act, 1961."*

5. It is observed through the computation of statutory total income furnished by the assessee, that department wrongly taken the figure of Rs. 2,04,00,869/- for the purposes of depreciation, whereas the amount of depreciation claimed by the assessee is Rs. 1,25,03,557/- only. The tax effect on this figure of depreciation disallowed comes to Rs. 39,10,110/- and this amount is below the limit of Rs. 50 Lacs as prescribed in circular mentioned (supra).

6. In view of this fact bring to our notice by assessee and applying **CIRCULAR NO. 17/2019 [F.NO. 279/MISC.142/2007-ITJ (PT.)]**, DATED 8-8-2019, we are of the opinion, that appeal of department is not maintainable, hence dismissed.

**7. In the result, in view of above appeal of the department is dismissed.**

Order pronounced in the open court on 12<sup>th</sup> day of October, 2023.

Sd/-

(N. K. CHOUDHRY)  
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 12/10/2023

Sr. PS (Dhananjay)

Sd/-

(GAGAN GOYAL)  
ACCOUNTANT MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

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BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**