

आयकर अपीलीय अधिकरण न्यायपीठ पणजी, पणजीमें।
IN THE INCOME TAX APPELLATE TRIBUNAL,
PANAJI BENCH : : PANAJI

[VIRTUAL HEARING AT PUNE]

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.63/PAN/2020
निर्धारण वर्ष / Assessment Year : 2014-15

Goa Minerals Private Limited, P.B.No.14, Salgaocar House, Dr.F.L.Gomes Road, Vasco da Gama, Goa – 403802 PAN: AAACG 6716 C	V s	The Assistant Commissioner of Income Tax, Circle-2(1), Panaji, Goa.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Veer Raghavan – AR
Revenue by	Shri N. Shrikanth – DR
Date of hearing	09/10/2023
Date of pronouncement	11/10/2023

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the assessee against the order of
ld.CIT(A)-Panaji-1 dated 30.01.2020 emanating from
assessment order under section 143(3) dated 30.10.2016. The
grounds of appeal are as under :

*“The appellant objects to the order of the Commissioner of
Income-tax (Appeals), Panaji-1 [‘CIT(A)'] dated 30.01.2020,
passed for the aforesaid assessment year, on the following
among other grounds:*

1. *The learned CIT(A) erred in confirming the action of the assessing officer in not granting depreciation during the year under present appeal (i.e. in the year of put to use), on expenditure of Rs.6,248,885 relating to financial year 2012-13, the claim of which as a revenue expenditure was disallowed in the then assessment for assessment year 2013-14 but was assessed as a capital expenditure and was allowed to add to capital work in progress.*

2. *The learned CIT(A) ought to have appreciated that the revised return under section 139(5) of the Income Tax Act, 1961 [‘the Act’] could not be filed by the appellant as the limitation period as provided for the purpose of filing revised return of income of the year under appeal has already expired at the time of completion of the then assessment of assessment year 2013-14.*

3. *The learned CIT(A) erred in not invoking the power of reducing the assessment granted under sub-section (a) read with sub-section (c) of section 251(1) of the Act as requested by the appellant during the course of appeal proceeding before him under principle of natural justice.*

4. *Each one of the above grounds of appeal is without prejudice to the other.*

5. *The appellant reserves the right to amend, alter or add to the grounds of appeal.”*

Submission of Id.Authorised Representative(Id.AR) :

2. The Id.AR filed a paper book containing 175 pages. The Id.AR submitted that assessee had claimed Rs.65,32,98/- as revenue expenditure in A.Y. 2013-14. However, in the assessment order passed under section 143(3), the Assessing Officer(AO) held that expenditure of Rs.65,32,998/- is the capital expenditure incurred on furniture, other equipments, electrical fittings etc., therefore, the AO held that it needs to be added in capital work in progress shown in the balance sheet on account of under construction "Dharwad Steel Plant". The Id.AR submitted that during the A.Y.2014-15, during the assessment proceedings the assessee vide letter dated 25.10.2016 submitted as under:

"We would also like to bring to your kind attention that in the assessment for AY 2013-14. the then learned assessing officer disallowed certain revenue expenditure amounting to Rs.62,48,885/- and treated the same as a capital expenditure eligible for depreciation in the year in which the same is put to use. In view of the same, we are enclosing statement of depreciation calculated after taking into account the aforesaid assessment of AY 2013-14. We request your goodself to kindly consider the same before completion of the assessment for AY 2014-15."

3. The ld.AR submitted that however AO failed to consider the request of the assessee. Aggrieved by the same, the assessee filed an appeal before the ld.CIT(A). Assessee made the said claim before ld.CIT(A) also. However, the ld.CIT(A) in para 7 held that said claim is not allowable in the light of decision of Hon'ble Supreme Court in the case of Goetze India Ltd., Vs. CIT (2006) 284 ITR 323 (SC). The ld.AR invited our attention to the assessment order passed under section 143(3) for A.Y.2013-14 which was at page 65-72 of the paper book. The ld.AR submitted that the ld.CIT(A) is empowered to admit such claim, but ld.CIT(A) erred in not admitting such claim. The ld.AR relying on following case laws :

- *Hon'ble Madras High Court in the case of Perlo Telecommunication and Electronic Components India P. Ltd. (141 taxmann.com 388)*
- *Hon'ble Bombay High Court in the case of Pruthvi Brokers & Shareholders (23 taxmann.com 23)*
- *Hon'ble Bombay High Court in the case of Sesa Goa Ltd. (117 taxmann.com 548)*
- *Hon'ble Bombay High Court in the case of Sesa Goa Ltd. (117 taxmann.com 96)*
- *Hon'ble Income Tax Appellate Tribunal, Bangalore Bench in the case of Rakesh Singh Vs. ACIT (26 taxmann.com 240)*

Submission of Id.Departmental Representative(ld.DR) :

4. The ld.DR of the Revenue relied on the order of the Lower Authorities.

Findings & Analysis :

5. We have heard both the parties and perused the records. It is an admitted fact that there was certain addition made in A.Y. 2013-14 treating it as capital expenditure. The assessee had made the claim for depreciation before the AO and ld.CIT(A), but they have not considered the said claim. As held by the Hon'ble Bombay High Court in the case of Pruthvi Brokers and Shareholders (supra) the ld.CIT(A) has erred in not admitting the claim made by the assessee even without filing revised return. However, in this case, the AO has not verified whether the impugned assets were used fully and exclusively for the purpose of business or not which is the requirement of section 32 of the Act. Therefore, in principle, the assessee is eligible for depreciation on the impugned addition made in A.Y. 2013-14 as capital expenditure, but as mentioned above, it has not been verified whether the said equipments/plant was used wholly and exclusively for the propose of business of assessee during the A.Y. 2014-15 or not ! Therefore, we direct the AO to consider

the claim of the assessee and allow it as per provisions of section 32 if the impugned asset was used wholly and exclusively for the purpose of business of the assessee during the year. Accordingly, appeal of the assessee is allowed for statistical purpose.

6. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open Court on 11th October, 2023.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 11th Oct, 2023/ SGR*

आदेश की प्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, पणजी बेंच,
नागपुर/ DR, ITAT, Bench, Panaji.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.