

IN THE INCOME TAX APPELLATE TRIBUNAL
JAIPUR BENCH "B", JAIPUR
BEFORE Dr. S. SEETHALAKSHMI, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA Nos. 457 to 459/JPR/2023 (A.Y.s 2012-13 to 2014-15)

Barmer Lignite Mining Company Limited,

Udyog Bhawan, Campus Khanij Bhawan,

Tilak Marg, C-Scheme, Jaipur-302 005

PAN No.: AADCB 0574G.

..... Appellant

Vs.

DCIT, Circle-06,

Jaipur, NCRB, Jaipur

..... Respondent

Appellant by : Mr. P. C. Parwal, CA, Ld. AR
Respondent by : Ms. Alka Gautam, CIT, Ld. DR
Date of hearing : 10/12/2024
Date of pronouncement : 01/01/2025

ORDER

PER GAGAN GOYAL, A.M:

These three appeals by the assessee are directed against the order of NFAC, Delhi dated 29.05.2023 passed u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y.s 2012-13 to 2014-15.

The assessee has raised the following grounds of appeal:-

In ITA No. 457/JP/2023

1. *The Ld. CIT(A), NFAC has erred on facts and in law in upholding the order of AO in not allowing the claim of amortization of surface rights of Rs.8,18,38,172/-.*

1.1 *The Ld. CIT (A), NFAC has erred on the facts and in law in not appreciating that when Hon'ble ITAT in its order dated: 12.10.2017 for A.Y. 2012-13 has held that what the assessee acquired by incurring the expenditure was an enduring business right in respect of mining the lignite and not acquisition of any fixed asset but since the expenditure has been incurred through M/s. RSMML, the issue was set aside to verify whether such expenditure has been claimed by M/s. RSMML or not and assessee in set aside proceedings brought on record the fact that RSMML has not claimed such expenditure, again holding that the expenditure is capital expenditure not eligible for amortization is against the direction/finding of Hon'ble ITAT and hence the order passed by lower authorities confirming the addition be quashed.*

1.2 *1.2 The Ld. CIT (A), NFAC has erred on facts and in law in not allowing the alternate claim of assessee that surface rights being acquisition of intangible asset is otherwise eligible for depreciation.*

2 *The Ld. CIT(A), NFAC has erred on facts and in law in upholding the order of AO in not allowing the claim of depreciation of Rs. 42,49,575/- in respect of intangible asset in nature of business right acquired on account of issue of equity shares free of cost to M/s. RSMML by incorrectly holding that mining lease transfer deed does not involve payment of any consideration ignoring that the transfer of equity shares to M/s. RSMML without consideration is a consideration in itself for acquiring mining rights.*

3 *The appellant craves to alter, amend and modify any ground of appeal.*

In ITA No. 458/JP/2023

1. *The Ld. CIT(A), NFAC has erred on facts and in law in upholding the order of AO in not allowing the claim of amortization of surface rights of Rs. 14,38,96,693/-.*

2. *The Ld. CIT (A), NFAC has erred on the facts and in law in not appreciating that when Hon'ble ITAT in its order dated: 12.10.2017 for A.Y. 2012-13 has held that what the assessee acquired by incurring the expenditure was an enduring business right in respect of mining the lignite and not*

acquisition of any fixed asset but since the expenditure has been incurred through M/s. RSMML, the issue was set aside to verify whether such expenditure has been claimed by M/s. RSMML or not and assessee in set aside proceedings brought on record the fact that M/s. RSMML has not claimed such expenditure, again holding that the expenditure is capital expenditure not eligible for amortization is against the direction/finding of Hon'ble ITAT and hence the order passed by lower authorities confirming the addition be quashed.

3. *the Ld. CIT (A), NFAC has erred on facts and in law in not allowing the alternate claim of assessee that surface rights being acquisition of intangible asset is otherwise eligible for depreciation.*

4 *The appellant craves to alter, amend and modify any ground of appeal.*

In ITA No. 459/JP/2023

1. *The Ld. CIT(A), NFAC has erred on facts and in law in upholding the order of AO in not allowing the claim of amortization of surface rights of Rs. 12,47,00,000/-.*

1.1 *The Ld. CIT (A), NFAC has erred on the facts and in law in not appreciating that when Hon'ble ITAT in its order dated: 12.10.2017 for A.Y. 2012-13 has held that what the assessee acquired by incurring the expenditure was an enduring business right in respect of mining the lignite and not acquisition of any fixed asset but since the expenditure has been incurred through M/s. RSMML, the issue was set aside to verify whether such expenditure has been claimed by M/s. RSMML or not and assessee in set aside proceedings brought on record the fact that M/s. RSMML has not claimed such expenditure, again holding that the expenditure is capital expenditure not eligible for amortization is against the direction/finding of Hon'ble ITAT and hence the order passed by lower authorities confirming the addition be quashed.*

1.2 *The Ld. CIT (A), NFAC has erred on facts and in law in not allowing the alternate claim of assessee that surface rights being acquisition of intangible asset is otherwise eligible for depreciation.*

2. *The appellant craves to alter, amend and modify any ground of appeal.*

3. *Necessary cost to be awarded to the assessee.*

2. Assessee company was incorporated on 19.01.2007 as a Joint Venture Company (JV) under the Companies Act, 1956 with M/s. Rajasthan State Mines and Minerals Ltd. (RSMML) (a Government of Rajasthan Undertaking) and M/s. Raj West Power Limited (RWPL) as shareholders (in the ratio of 51:49 voting power) to carry out lignite mining activities at Kapurdi and Jalipa at Barmer District for captive use of lignite based thermal power plant of M/s. RWPL. It is thus a subsidiary of M/s. RSMML and therefore, a Government Company. The assessee commenced its lignite mining activities from October, 2011 at Kapurdi Mines.

3. The Government of Rajasthan (GOR) decided to allow power projects in the private sector and invited international competitive solicitations for setting up a lignite mining cum thermal power project at village Jalipa and Kapurdi, District Barmer in Rajasthan. Under an Implementation Agreement (IA) dated 29th May 2006 (**PB 1-38**), M/s. RWPL was allowed to set up its power plant and a separate JV company was to be formed as a mining company for mining lignite to be supplied for the thermal power plant of M/s. RWPL. As per clause 3.5(i) of IA (**PB 9**), the mining lease of captive lignite mine was granted to M/s. RSMML by Government of Rajasthan and as per clause 3.5(ii) (**PB 10**) the mining lease was to be transferred to JV Company after obtaining prior approval of Government of India. However, M/s. RSMML was not to take any financial obligation on this account.

4. Under the provisions of IA, GOR took unto itself obligation to grant requisite permissions, provide land (both Govt. owned and acquired from third

parties), water supply, rehabilitation, assistance in obtaining necessary licenses viz. explosives, fuel, import license, visas, etc. and to act as a facilitator in implementation of the project. M/s. RWPL's obligation was to implement the project, compliance with regulatory affairs and arrangement of finances to implement the project without any financial obligation on GOR or its nominated agencies.

5. To give effect to the IA, a Joint Venture Agreement (JV) was executed on 27th December, 2006 between M/s. RSMML and M/s. RWPL (PB 39-61) to form a 'Mining Entity' with the principal objective (Para 2 & 3.1, PB 45) to develop and operate the mines for the purpose of supply of lignite and fuel for the power plants of RWPL. The JV Company was to be formed as a Government Company and the JV agreement provides for the manner in which mining leases over the mines were to be transferred to JV Company, subscription of shares in company by the partners, define the mutual rights and obligations and set out the terms and conditions governing the relationship between the parties.

6. In terms of the JV agreement, M/s. RSMML and GOR would after obtaining the mining leases for the mines, transfer such mining leases, surface rights and any other rights for the development, operation and management of the mines in favour of the JV company and will contribute its local knowledge, technical knowledge and other expertise in relation to the mines. M/s. RWPL shall provide management support and the entire investment to the JV Company. As per clause 4.1 of JV agreement (PB 48), M/s. RSMML will hold 51% equity in the JV company with no financial liability on it. Further, the authorized share capital of the JV

Company shall be Rs. 120 crores and the initial paid up capital shall be Rs. 20 crores. The remaining promoter contribution would be brought in by way of unsecured subordinate loans or other instruments as per the approval of the lenders to the project.

7. In compliance with the JV agreement, the assessee company was formed as JV Company wherein 51% holding is of M/s. RSMML and 49% is of M/s. RWPL. M/s. RSMML in compliance of its responsibilities under JV agreement and obligations of GOR under IA, executed many actions in respect of Kapurdi Mining Project such as applying and obtaining for mining lease and its subsequent transfer of user right to JV company for a period of 30 years, acquisition of land under the Land Acquisition Act, environmental clearance from Ministry of Environment & Forest (MOEF), getting NOC from GOR for carrying out mining activity by JV company, etc. M/s. RSMML was also taking necessary steps during A.Y. 2012-13 to secure another lignite mining lease at Village Jalipa, Barmer which is also transferred to assessee with associated rights following the same process vide agreement dated 25th May, 2015. **However, GOR refused to transfer the mining land acquired by M/s. RSMML to the assessee vide letter dated: 14.09.2012 (PB 62) and thus assessee has only the right to extract the mineral over a period of 30 years on such mining land.**

8. To execute its obligations under IA and JV agreement for acquiring and transferring mining lease, obtaining various approvals and permissions and acquisition of land for the Kapurdi mining project and Jalipa mining project, M/s. RSMML incurred expenditure on payment of compensation to the land losers

and other expenses. As per the JV agreement, assessee reimbursed entire expenditure as above by way of transferring the amount as demanded from time to time by M/s. RSMML into designated escrow account mechanism as provided therein (Para 3.3(ii), PB 46). Assessee further incurred expenses being administrative and pre operating expenses for acquiring the aforesaid mining rights over Kapurdi/Jalipa lignite mining lease and also incurred net interest and finance cost in respect of funds borrowed for aforesaid expenditure. The entire expenditure incurred by the assessee for acquiring mining lease and operational rights over the aforesaid mining project for a period of 30 years without acquiring any right in the land has been capitalized in the balance sheet as “Surface Rights on Kapurdi Mines” and “Surface Rights on Jalipa Mines”. The year wise amortized amount reflected in the balance sheet under the head other intangible asset is as under:-

1. A.Y.	2. Surface right of Kapurdi mine amortized	3. Amortization of shares issued to M/s. RSMML without cost	4. Surface right of Jalipa mine amortized	5. Amortization of shares issued to M/s. RSMML without cost	6. Total Amount
2016-17	Rs. 19.58 Cr.	Rs. 18 Lacs	NIL	NIL	Rs. 19.76 Cr.
2017-18	Rs. 17.80 Cr.	Rs. 16 Lacs	NIL	NIL	Rs. 17.96 Cr.
2018-19	Rs. 18.41 Cr.	Rs. 17 Lacs	Rs. 1.94 Cr.	Rs. 1 Lac	Rs. 20.53 Cr.
2020-21	Rs. 12.45 Cr.	Rs. 12 Lacs	Rs. 18.89 Cr.	Rs. 7 Lacs	Rs. 31.53 Cr.

10. AO observed that though the land is not registered in the name of assessee but it has ownership right over the land. Land is not a depreciable asset; therefore, depreciation is not allowable on the same. Further, the acquisition of

mining land does not fall in the ambit of section 32(1) (ii) of the Act to qualify as an intangible asset in as much as the rights referred in this provision are that which are granted by the Government authorities only whereas the right acquired in normal course of business are not eligible for depreciation under this provision. Accordingly AO disallowed the claim of amortization.

11. The Ld. CIT (A) discussed this issue at Para 5, Page 7-16 of its order wherein after verbatim reproducing the set aside assessment order for A.Y. 2012-13 at Pg 7-12, it held at Para 5.1 that in view of the observation of AO, the claim of assessee is not found to be justifiable and thus upheld the order of AO.

12. In view of the facts it is unchallenged facts that to carry on mining operation the assessee company which is a joint venture between M/s. Rajasthan State Mines and Mineral Ltd., RSMML, (Govt. of Rajasthan under taking) and M/s. Raj West Power Ltd. (RWPL) Paid charges to the owners of land so that minerals i.e. lignite can be extracted for a period of 30 years. It is also observed that the ownership of land will not be transferred to the assessee or the joint venture partner, i.e. M/s. Raj West Power Ltd. (RWPL). In view of this, the rights of extraction of lignite by the assessee are in the nature of mining lease with a certain period and as per geological survey there is a definite quantity of lignite exists in the mines and only a certain quantity each year can be extracted.

13. The minerals extracted by the assessee is to be used in their captive power plant for generation of power means the lignite extracted will contribute as raw material for production of power. The assessee earned revenue from the sale of

power which is duly refracted in the financial of the assessee and not under challenge by the revenue in that case how the cost of procuring raw material can be disallowed. Here we are applying the concept of matching revenues with relevant costs to earn the revenue. If the same is being disallowed it will be detrimental to the interest of the assessee, as he has to pay undue taxes on notional income. Further, with this action of revenue will distort the picture of revenue earned by the assessee alongwith losing the character of being true and fair.

14. In contradistinction to this fact even if it is assumed for the time being, that instead of extracting the raw material from the mines under consideration the assessee has to buy the goods being raw material from the market in that case also cost of purchase has to be allowed to match the revenue with the cost hence we are not in agreement with the orders of the AO and Ld. CIT (A) that amortization of mining lease charges are not allowable. We further observed the provisions of section 35E of the Act as under:

Deduction for expenditure on prospecting, etc., for certain minerals.

35E. (1) Where an assessee, being an Indian company or a person (other than a company) who is resident in India, is engaged in any operations relating to prospecting for, or extraction or production of, any mineral and incurs, after the 31st day of March, 1970, any expenditure specified in sub-section (2), the assessee shall, in accordance with and subject to the provisions of this section, be allowed for each one of the relevant previous years a deduction of an amount equal to one-tenth of the amount of such expenditure.

(2) The expenditure referred to in sub-section (1) is that incurred by the assessee after the date specified in that sub-section at any time during the year of commercial production and any one or more of the four years immediately preceding that year, wholly and exclusively on any operations relating to prospecting for any mineral or group of associated minerals specified in Part A or Part B, respectively, of the Seventh Schedule or on the development of a mine or other natural deposit of any such mineral or group of associated minerals :

Provided that there shall be excluded from such expenditure any portion thereof which is met directly or indirectly by any other person or authority and any sale, salvage, compensation or

insurance moneys realised by the assessee in respect of any property or rights brought into existence as a result of the expenditure.

(3) Any expenditure—

- (i) on the acquisition of the site of the source of any mineral or group of associated minerals referred to in sub-section (2) or of any rights in or over such site;*
- (ii) on the acquisition of the deposits of such mineral or group of associated minerals or of any rights in or over such deposits; or*
- (iii) of a capital nature in respect of any building, machinery, plant or furniture for which allowance by way of depreciation is admissible under section 32,*

Shall not be deemed to be expenditure incurred by the assessee for any of the purposes specified in sub-section (2).

(4) The deduction to be allowed under sub-section (1) for any relevant previous year shall be—

- (a) an amount equal to one-tenth of the expenditure specified in sub-section (2) (such one-tenth being hereafter in this sub-section referred to as the instalment); or*
- (b) such amount as is sufficient to reduce to nil the income (as computed before making the deduction under this section) of that previous year arising from the commercial exploitation [whether or not such commercial exploitation is as a result of the operations or development referred to in sub-section (2)] of any mine or other natural deposit of the mineral or any one or more of the minerals in a group of associated minerals as aforesaid in respect of which the expenditure was incurred, Whichever amount is less:*

Provided that the amount of the instalment relating to any relevant previous year, to the extent to which it remains unallowed, shall be carried forward and added to the instalment relating to the previous year next following and deemed to be part of that instalment, and so on, for succeeding previous years, so, however, that no part of any instalment shall be carried forward beyond the tenth previous year as reckoned from the year of commercial production.

(5) For the purposes of this section,—

- (a) "operation relating to prospecting" means any operation undertaken for the purposes of exploring, locating or proving deposits of any mineral, and includes any such operation which proves to be infructuous or abortive;*
- (b) "year of commercial production" means the previous year in which as a result of any operation relating to prospecting, commercial production of any mineral or any one or more of the minerals in a group of associated minerals specified in Part A or Part B, respectively, of the Seventh Schedule, commences;*
- (c) "Relevant previous years" means the ten previous years beginning with the year of commercial production.*

(6) Where the assessee is a person other than a company or a co-operative society, no deduction shall be admissible under sub-section (1) unless the accounts of the assessee for the year or years in which the expenditure specified in sub-section (2) is incurred have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288, before the specified date referred to in section 44AB and the assessee furnishes for the first year in which the deduction under this section is claimed, the report of such audit by that date] in the

prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

(7) Where the undertaking of an Indian company which is entitled to the deduction under sub-section (1) is transferred, before the expiry of the period of ten years specified in sub-section (1), to another Indian company in a scheme of amalgamation—

- (i) no deduction shall be admissible under sub-section (1) in the case of the amalgamating company for the previous year in which the amalgamation takes place; and*
- (ii) the provisions of this section shall, as far as may be, apply to the amalgamated company as they would have applied to the amalgamating company if the amalgamation had not taken place.*

(7A) Where the undertaking of an Indian company which is entitled to the deduction under sub-section (1) is transferred, before the expiry of the period of ten years specified in sub-section (1), to another Indian company in a scheme of demerger, —

- (i) no deduction shall be admissible under sub-section (1) in the case of the demerged company for the previous year in which the demerger takes place; and*
- (ii) the provisions of this section shall, as far as may be, apply to the resulting company as they would have applied to the demerged company, if the demerger had not taken place.]*

(8) Where a deduction under this section is claimed and allowed for any assessment year in respect of any expenditure specified in sub-section (2), the expenditure in respect of which deduction is so allowed shall not qualify for deduction under any other provision of this Act for the same or any other assessment year.

15. In view of the provisions of sub-section (3) of the section 35E of the Act, it is categorically been dealt with the situation under consideration and denied the claim of the expenses on deferred revenue basis. But as we discussed (supra) vide Para 14 of this order, If the assessee would have buy the goods from market, that also would have been included all these expenses as well as expenses mentioned in section 35E and 37 of the Act. To substantiate our view we further rely on the judicial pronouncement of the Hon'ble Apex Court in the case of **[1997] 225 ITR 802 (SC.) Madras Industrial Investment Corporation Ltd. Vs. CIT**, wherein the Hon'ble Apex Court held as under:

“Expenditure is not necessarily confined to the money which has been actually paid out. It covers a liability which has accrued or which has been incurred, although it may have to be discharged at a future date. However, a contingent liability which may have to be discharged in

future cannot be considered as expenditure. Although expenditure primarily denotes the idea of spending or paying out, it may, in given circumstances, also cover an amount of loss which has not gone out of the assessee's pocket but which is all the same, an amount which the assessee has had to give up. It also covers a liability which the assessee has incurred in praesenti although it is payable in futuro. A contingent liability that may arise in future is, however, not 'expenditure'. It would also cover not just a one-time payment but a liability spread out over a number of years.

When a company issues debentures at a discount, it incurs a liability to pay a larger amount than what it has borrowed, at a future date. It is not necessary to go into the question whether this additional liability equivalent to the discount, which is incurred in praesenti but is payable in future, represents deferred interest or not. That may depend upon the totality of circumstances relating to the issue of debentures, including its terms. The liability, to pay the discounted amount over and above the amount received for the debentures, is a liability which has been incurred by the company for the purposes of its business in order to generate funds for its business activities. The amounts so obtained by issue of debentures are used by the company for the purposes of its business. This would, therefore, be expenditure. In the light of the ratio laid down by the Court in the case of India Cements Ltd. v. CIT [1966] 60 ITR 52 (SC) liabilities incurred for the purpose of obtaining the loan would be revenue expenditure.

The Tribunal, however, held that since the entire liability to pay the discount had been incurred in the accounting year in question, the assessee was entitled to deduct the entire amount of Rs. 3 lakhs in that accounting year. This conclusion was not justified looking to the nature of the liability. It was true that the liability had been incurred in the accounting year. But the liability was a continuing liability which stretched over a period of 12 years. It was, therefore, a liability spread over a period of 12 years. Ordinarily, the revenue expenditure which is incurred, wholly and exclusively for the purpose of business, must be allowed in its entirety in the year in which it is incurred. It cannot be spread over a number of years even if the assessee has written it off in his books over a period of years. However, the facts may justify an assessee who has incurred expenditure in a particular year to spread and claim it over a period of ensuing years. In fact, allowing the entire expenditure in one year might give a very distorted picture of the profits of a particular year.

Issuing debentures at a discount is another such instance where, although the assessee has incurred the liability to pay the discount in the year of issue of debentures, the payment is to secure a benefit over a number of years. There is a continuing benefit to the business of the company over the entire period. The liability should, therefore, be spread over the period of the debentures.

The appellant, therefore, had, in its return, correctly claimed a deduction only in respect of the proportionate part of discount of Rs. 12,500/- over the relevant accounting period in question. The view taken is also in conformity with accounting practice of showing the discount in 'discount on debentures account' which is written off over the period of the debentures.

The appellant was, therefore, entitled to deduct a sum of Rs. 12,500/- out of the discount of Rs. 3 lakhs in the relevant assessment year. The balance expenditure of Rs. 2, 87,500/- could not be deducted in the assessment year in question.”

16. The payment made by the assessee to land owners via its joint venture partner, i.e. M/s. Rajasthan State Mines and Mineral Ltd., RSMML, (Govt. of Rajasthan under taking) for facilitating routine operations and smooth functioning of the business of the assessee. It was held in the case of CIT v. Excel Industries Ltd. [1980] 122 ITR 995/4 Taxman 89 (Bom.) *“That the power line remained the property of the District Board and the assessee had not acquired any capital asset or any enduring benefit or advantage. The payment was made for commercial expediency. Therefore, the Commissioner (Appeals) had rightly held the expenditure as revenue expenditure.*

“Regarding expenditure incurred on construction of link road on Government lands it was found that the expenditure on road had been incurred for facilitation of routine operations and smooth functioning of transport system. These roads had been constructed on the Government land. No new asset had been acquired by the assessee. It was held in the case of Hindustan Machine Tools Ltd. v. CIT [1989] 175 ITR 220 / [1988] 40 Taxman 43 (Kar.) that the construction of the road which was not the property of the assessee was undoubtedly connected with and advantageous to the business activity of the assessee. Though it conferred upon the assessee an enduring advantage for the benefit of its business, it did not secure to the assessee any tangible, or intangible asset and further the enduring advantage gained by the assessee was chiefly to facilitate the assessee’s business operations with greater efficiency and profitability without touching fixed capital of the assessee and there was no addition to or expansion of the profit-making apparatus. Keeping in view, the discussion above the Bench declined to interfere with the order of the Commissioner (Appeals) on this ground also.”

17. Moreover, the similar issue has been discussed and allowed by the same bench for A.Y.s 2016-2017 to 2018-19 & 2020-21 vide ITA Nos. ITA No. 460 to 463/JPR/2023, dated: 16.12.2024. It is also observed that for the years under consideration in this order earlier also, the coordinate bench has allowed the issue in favour of the assessee and restored the matter back to the file of the AO, the limited scope of AO was only to verify whether M/s. RSMML has made any claim of

same expenditure which the assessee has claimed and ascertain the outcome of such claim whether such expenditure has been allowed. For ready reference the relevant finding of Hon'ble ITAT is reproduced as under **(PB 231-232)**:-

There is no dispute with regard to the fact that the assessee neither acquired title over the mines nor the rights into any fixed assets by making expenditure. The assessee has acquired absolute rights for mining lignite this is essentially for 30 years without any impediment. The moot question is whether such expenditure is for acquiring any capital asset or merely some business rights. It is not the case of acquiring fixed assets for enduring benefit but the assessee would have enduring business rights in respect of mining the lignite. Admittedly, the expenditure has been incurred through RSMML it is not clear whether the RSMML has also claimed such expenditure in the absence of same, we deem it proper to restore this issue to the file of the Assessing Officer for decision afresh. The AO would verify whether the RSMML has made any claim on the same expenditure which the assessee has claimed and ascertain the outcome of such claim whether such expenditure has been allowed. Then, the AO would decide in accordance with the law and the case laws as cited by the assessee. Thus, this ground of the assessee's appeal is allowed for statistical purpose.

Thus Hon'ble ITAT has given a finding that by incurring the expenditure assessee has not acquired any fixed asset for enduring benefit but the assessee got enduring business right for mining the lignite. However, since the expenditure has been incurred through M/s. RSMML, the AO was directed to verify whether M/s. RSMML has claimed such expenditure or not.

18. In the set aside proceedings the assessee brought on record the fact that M/s. RSMML has not claimed any expenditure in relation to acquisition of surface rights of Kapurdi mines on behalf of the assessee for which attention was drawn to Note No.11.6 of Notes to Accounts of M/s. RSMML in its annual report for F.Y. 12-13 **(PB 64)** where it disclosed that it has not treated the amount received from the assessee for acquiring the mining right for the assessee as its asset or liability in the financial statements but since the title of land at Kapurdi is mutated to M/s. RSMML Ltd., the same is shown at a nominal value of Rs.1 in its balance sheet.

This fact is also confirmed by M/s. RSMML vide letter dt.10.07.2018 **(PB 65-68)**. The AO at para 3.3 of its order for A.Y. 2012-13 has accepted that no benefit has accrued to M/s. RSMML in respect of the said land. Thus, when this fact is on record and not disputed by the AO read with the direction of the coordinate bench, the claim of amortization of surface rights are allowable. Hence by not following the direction of coordinate bench, addition confirmed by both the lower authorities is illegal & bad in law and therefore, the same be directed to be allowed. **In these terms Ground Nos. 1 (with its sub-grounds) vide ITA No. 457/JP/2023, Ground Nos. 1, 2 and 3 vide ITA No. 458/JP/2023 and Ground Nos. 1 (with its sub-grounds) vide ITA No. 458/JP/2023 are allowed.**

19. Ground No. 2 vide ITA No. 457/JP/2023 pertains to allowability of Rs. 42, 49,575/- on account of depreciation on intangible asset in the nature of business right acquired on account of issue of equity shares free of cost to M/s. RSMML by incorrectly holding that mining lease transfer deed does not involve payment of any consideration ignoring that the transfer of equity shares to M/s RSMML without consideration is a consideration in itself for acquiring mining rights. We have gone through the relevant documents, i.e. Joint venture agreement between M/s. RSSML and M/s. RWPL. In the present case, assessee has allotted shares of Rs.10.20 crores to M/s. RSMML without any financial obligation on it in lieu of it having obtained the mining lease for the mines, transferring such mining lease, surface rights and other rights in relation thereto for the development, operation and management of mines in favour of the assessee and to contribute its local knowledge, technical knowledge and other expertise in relation to the mines as referred in clause 2 and clause 3 **(PB 45-47)** of JV agreement dated: 27.12.2006.

20. On this issue the contention of the assessee is not tenable as the assessee is said to produce any document which confirms the existence/creation of any intangible assets in its favour. It is pertinent to mention that the joint venture on which the assessee is relying is between M/s. RSSML and M/s. RWPL. It clearly demonstrates that by virtue of this free share allotment benefited M/s. RSSML and certainly not expenditure/cost to M/s. RWPL. It is further observed that the assessee is failed to demonstrate that M/s. RSSML had declared any income against receiving these shares free of cost and on the other side instead of the assessee rather M/s. RWPL is entitled to clean the expenditure/depreciation/amortization charge. With this transaction the assessee is nowhere concerned and rather its matter of personal benefit and cost to M/s. RSSML and M/s. RSWPL respectively.

21. We have considered the judicial pronouncement relied upon by the assessee but found the same are not in the context of the matter under consideration. The assessee is failed to demonstrate any visible benefit accrued to it by virtue of this free allocation of shares to M/s. RSSML. There is no documentary evidence furnished before us which confirms any sort of technical or other support being drawn by the assessee out of this transaction. As discussed (supra) an appropriate amortization charge where the benefit to the assessee was visible in the form mining lease charges paid are duly allowed, but on this issue we are not convinced with the claim of the assessee that any intangible asset came into existence which benefited the assessee in terms of its business operation. In view of above based on this fact of the case we are clear opinion that the assessee is not entitled to claim the depreciation of Rs. 42, 49,575/- on

this show called intangible asset. Hence the orders of authorities below are sustained and ground raised by the assessee is dismissed.

22. In the result, ITA No. 457/JPR/2023 is partly allowed, whereas the ITA Nos. 458/JPR/2023 and 459/JPR/2023 are fully allowed.

Order pronounced in the open court on 1st day of January 2025.

Sd/-

(Dr. S. SEETHALAKSHMI)

JUDICIAL MEMBER

Jaipur, दिनांक/Dated: 01/01/2025

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., Sr.DR., ITAT,
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar)
ITAT, Jaipur

	Details	Date	Initials	Designation
1	Draft dictated on PC on	01.01.2025		Sr.PS/PS
2	Draft Placed before author	01.01.2025		Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS/PS
7.	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date of Dispatch of order			