

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT
&
SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 3632 & 3633/Mum/2018
Assessment Year: 2013-14 & 2014-15

Deputy Commissioner of Income-tax - 3(3)(1), Mumbai	Vs.	M/s. Sanjana Cryogenics Storages Ltd. 116, Bajaj Bhavan 11 th Floor, Nariman Point Mumbai - 400021 [PAN: AADCS5093D]
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

I.T.A. No. 4769/Mum/2019
Assessment Year: 2016-17

Jt. CIT (OSD)-3(3)(1), Mumbai	Vs.	M/s. Sanjana Cryogenics Storages Ltd. 116, Bajaj Bhavan 11 th Floor, Nariman Point Mumbai - 400021 [PAN: AADCS5093D]
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Madhur Agarwal & Shri Ravikant Pathak, A/Rs
Revenue by :	Shri Dr. Kishor Dhule, CIT D/R & Shri Bhangapatil Pushkraj Ramesh, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 19/03/2025
घोषणा की तारीख /Date of Pronouncement: 25/03/2025

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

I.T.A. No. 3632, 3633/Mum/2018 & I.T.A. No. 4769/Mum/2019, are three separate appeals by the revenue preferred against the order of the Id. CIT(A) - 8, Mumbai, [hereinafter 'the Id. CIT(A)'] pertaining to AY 2013-14, 2014-15 & 2016-17.

2. The revenue is aggrieved by the order of the ld. CIT(A) and has raised the following grounds of appeal in ITA Nos. 3632/Mum/2018 for AY 2013-14:-

“1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in directing the AO to delete the disallowance of depreciation of Rs. 4,44,07,662/- claimed by the assessee in respect of Iron Ore rights, without appreciating the fact that the shareholders of RRS Minerals i.e., Mr. Bharat Bussa and Mrs. Rita Bussa who got 15.75 crores each as per the agreement dated 15.10.2009 were not having any right and the so called right for purchase of iron ore was with the company i.e. RRS and not with the shareholder and the assessee has never bought the business rights from RRS on which assessee is claiming depreciation?

2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in directing the AO to delete the disallowance of depreciation of Rs. 4,44,07,662/- claimed by the assessee in respect of Iron Ore rights, without appreciating the fact that the decision of the Hon'ble Supreme Court in the case of Mysore Minerals Ltd. vs. CIT (1199) 101 Taxman 166 (SC) is distinguishable from the facts of the instant case under consideration as the assessee has never bought the business rights from RRS on which assessee is claiming depreciation?

3. (a) Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in directing the AO to delete the disallowance of depreciation of Rs. 4,44,07,662/- claimed by the assessee in respect of Iron Ore rights by taking cognizance of the previous assessment year i.e. AY 2011-12 which was only processed u/s. 143(1)?

3. (b) Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in directing the AO to delete the disallowance of depreciation of Rs. 4,44,07,662/- claimed by the assessee in respect of Iron Ore rights by taking cognizance of the previous assessment year i.e. A. Y. 2012-13 where the issue was not examined and it is the impugned assessment year only that the facts in respect of depreciation in respect of Iron Ore Rights disallowed by AO were verified and brought on record by the AO?

3.c) Whether in view of the above facts the decision of the Hon'ble Bombay High Court in the case of Madhukar C. Ashar vs. Union of India [2016] 69 taxmann.com 221 (Bombay), correctly applied and relied on by the CIT(A)?

4. The appellant craves leave to amend, alter, delete or add grounds which may be necessary”

3. The captioned appeals by the revenue were disposed by the Co-ordinate Bench vide order dated 20/06/2022 and the Co-ordinate Bench has allowed the captioned appeals in favour of the revenue and against the assessee.

4. The assessee preferred miscellaneous applications before the Tribunal being M.A. Nos. 396, 397 & 398/Mum/2022 for AYs 2013-14, 2014-15 & 2016-17 respectively and the Tribunal, disposed of the applications vide order dated 25/07/2023. The Co-ordinate Bench observed that the assessee has raised an issue that the Co-ordinate Bench in *ITA No. 3175/Mum/2024 for AY 2000-01 dated 22/09/2010, in Shri Adhikari Brothers Television Networks Ltd. vs. ACIT reported in (2011) 137 TTJ (Mum) 424*, has categorically held that when the assessee purchased shares to obtain, use and occupy the premises built by the builder company, the assessee's right to use and occupy the property is embedded in the shares and therefore, assessee is entitled to depreciation.

4.1. The Co-ordinate Bench found that, non-consideration of judicial precedents cited before the Co-ordinate Bench makes the order of the Co-ordinate Bench suffering from a mistake apparent on record. Accordingly, on this issue, the order passed by the Co-ordinate Bench was recalled for all the three years to the extent of non-consideration of the decision by the Co-ordinate Bench in the case of *Shri Adhikari Brothers Television Networks Ltd. (supra)*.

5. Pursuant to the recall, the captioned appeals were heard at length, case records carefully perused and the relevant documentary evidence

brought on record, duly considered in light of Rule 18(6) of the ITAT Rules, 1963.

6. The Id. Counsel for the assessee vehemently argued that once the order is recalled, the assessee is free to argue the issues raised before the Tribunal earlier and all the issues need to be decided afresh.

The Id. D/R strongly opposed to this and stated that recall was only for the limited purpose to consider the decision of the Co-ordinate Bench in the case of *Shri Adhikari Brothers Television Networks Ltd. (supra)* and, therefore, the argument should be restricted only to the extent of applicability/non-applicability of the said decision of the Co-ordinate Bench.

7. We have given a thoughtful consideration to the rival submissions. In our considered opinion, the Co-ordinate Bench has merely recalled its earlier order in appeal, only to the extent of non-consideration of the order of the Co-ordinate Bench in the case of *Shri Adhikari Brothers Television Networks Ltd. (supra)* and nothing more which means that scope of the re-hearing is only to address the earlier omission and the Tribunal must correct obvious mistakes to uphold justice and the rectification is confined to considering the previously ignored authority.

7.1. In our humble opinion, Section 254(2) of the Act should not be stretched to allow revisiting the Tribunal's conclusion. Its ambit is confined to correcting obvious mistakes. For this proposition, we draw support from the decision of the Hon'ble Delhi High Court in the case of *K. L. Bhatia [1990] 182 ITR 361 (Delhi)*. In another case of *Deeksha Suri v. Income-Tax Appellate Tribunal., (1998) 232 ITR 395*, the Hon'ble Delhi

High Court reinforced that the rectification power does not equate to a substantive re-adjudication.

7.2. Therefore, we are of the considered view that when an order is recalled u/s 254(2) of the Act, for failure to consider a particular authority or arguments, the purpose of the recall is merely to rectify that omission as held by the Hon'ble Supreme Court in the case of *ACIT v. Saurashtra Kutch Stock Exchange Ltd.* [(2008) 305 ITR 227 (SC)].

8. In light of the above discussion, all that we have to say is whether the facts and the decision in the case of *Shri Adhikari Brothers Television Networks Ltd. (supra)*, apply on the facts of the case in hand.

9. Facts on record show that the assessee company is engaged in the business of running of ammonia storage terminal, generation of power, dealing in ammonia and trading/investment in shares, mutual funds and derivatives. The assessee has taken over the company RRS Minerals Resources Pvt. Ltd. (RMRPL) which had exclusive Iron ore rights in respect of Iron ore extracted from the mines owned by Messer's M S Gharse Minerals (MSGM). The assessee had paid Rs.11.30 Crores to MSGM for acquiring long term rights to purchase iron ore extracted by MSGM at a pre-determined rate until the year 2027. The assessee acquired shares of the promoters of RRS and by virtue of 100% holding of RRS, it becomes wholly owned subsidiary. The two shareholders who sold shares of RRS minerals to the assessee were Mr. Bharat Busa and Mrs. Rita Busa who got Rs.15.75 Crores. As per the agreement dated 15/10/2009. Mr. Bharat Busa and Mrs. Rita Busa were never having any intangible right in their individual capacity which can be transferred to the assessee. Mining rights were with MSGM and only purchase rights

were acquired by the assessee by paying amounts to MSGM. The amount paid to promoters had no co-relation with purchase rights since at the time of such payments, exclusively such rights vested with RRS being a separate entity *vis-à-vis* promoter.

9.1. The assessee applied for its merger with RRS from the date of acquisition of shares of RRS, the same stood approved by the Hon'ble Bombay High Court. While giving effect to the merger, the assessee capitalized the cost incurred towards promoters of Rs. 31.58 Crores with other expenses and claimed depreciation on total amount of Rs.46.89 Crores.

10. The contention of the Id. Counsel for the assessee that the assessee company always intended to acquire the business and the aforesaid intangible rights and the payment made by the said company was thus only for the acquisition of intangible rights which were a compulsory tool to commence the business of mining, purchasing and selling of iron ores, cannot be accepted. If such would have been the intent of the assessee, the same could have been given effect by directly purchasing the rights from RRS instead of acquiring its shares.

11. In our understanding of the law, the shares cannot be recorded as intangible asset nor does it fall within the category or element covered for depreciation u/s 32 of the Act. It can only be regarded as investment and the shares are regarded as separate class of the asset. Therefore, there is no question of any claim of depreciation on such class of shares.

12. Now, coming to the facts of the decisions in the case of *Shri Adhikari Brothers Television Networks Ltd. (supra)*, for which limited issue, the order of the Tribunal dated 20/06/2022, was recalled, the facts of

the case are that the assessee made payments to Westwind Realtors Private Limited (“WRPL”) towards purchase of shares and construction contribution. Depreciation was claimed on such amount. When asked to justify its claim, the assessee stated that such shares were purchased with a view to become owner of floor area and basement parking and towers of building called Oberoi Chambers from WRPL. In the regular assessment of WRPL, the acquisition of shares by the assessee had been treated as sale of premises by WRPL. Thus, by purchasing requisite number of shares and making non-refundable construction contribution, member becomes entitled to hold, use and occupy the definite premises. The WRPL treated the acquisition of shares by the assessee and other members as sale consideration of its premises.

12.1. Thus, the most distinguishing factor in the case of *Shri Adhikari Brothers Television Networks Ltd. (supra)* with that of the assessee is that *Shri Adhikari Brothers Television Networks Ltd. (supra)* was contextually confined to those rare instances where shareholding uniquely conferred exclusive occupancy rights.

13. The Hon’ble Andhra Pradesh High Court in the case of *Sanofi Pasteur Holding SA v. Department of Revenue, Ministry of Finance [2013] 30 taxmann.com 222*, clarified that the shares, by their very character, do not constitute a separable asset amenable to wear and tear. Permitting depreciation on the share component would inevitably result in an anomalous double benefit. Thus, comparing the facts of the case in hand with that of *Shri Adhikari Brothers Television Networks Ltd. (supra)*, we do not find any similarity, so far as its applicability to the case of the assessee in hand. Therefore, the captioned appeals by the revenue

stands allowed as per the decision of the Co-ordinate Bench and all these appeals pursuant to the miscellaneous application are also decided in favour of the revenue and against the assessee.

14. In the result, appeals of the revenue are allowed.

Order pronounced in the Court on 25th March, 2025 at Mumbai.

Sd/-

**(SAKTIJIT DEY)
VICE-PRESIDENT**

Sd/-

**(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER**

Mumbai, Dated 25/03/2025

Sd/-

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai