



**IN THE INCOME TAX APPELLATE TRIBUNAL, PANAJI BENCH, PANAJI  
BEFORE HON'BLE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**



**AND**

**SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER**

SR	ITA No	AY	APPELLANT	RESPONDENT	PAN	
1	253/PAN/2019	2010-11	Asstt. Commissioner of Income Tax, Circle- 1, Margao, Goa	Rohit Ramchandra Pai Panandikar	ADHPP0844K	
2	254/PAN/2019	2011-12				
3	255/PAN/2019	2010-11			Rohan Ramchandra Pai Panandikar	ADHPP0845J
4	256/PAN/2019	2011-12				
5	257/PAN/2019	2010-11	Income Tax Officer, Ward-3, Margao, Goa	Rajani Ramchandra Pai Panandikar	AINPP5255B	
6	258/PAN/2019	2011-12				
7	285/PAN/2019	2010-11	Income Tax Officer, Ward-2, Margao, Goa	Shanu Pai Panandikar (HUF)	AAOHS6709J	
8	286/PAN/2019	2011-12				
9	287/PAN/2019	2011-12	Income Tax Officer, Ward-3, Margao, Goa	Raj Shanu Pai Panandikar	AEDPP3758D	
10	288/PAN/2019	2011-12	Income Tax Officer, Ward-4, Margao, Goa	Kunda Shanu Pai Panandikar	AEOPS8971G	

**Appearances**

Assessee by: Mr R K Pikale ['Ld. AR']

Revenue by: Mr Narendra Reddy ['Ld. DR']

Date of conclusive Hearing: 24/02/2025

Date of Pronouncement : 25/02/2025



## ORDER

### PER BENCH (6:4);

This bunch of ten appeals instituted u/s 253(2) of the Act by the Revenue impugns separate orders passed u/s 250 of the Income-tax Act, 1961 [‘the Act’ hereinafter] by the learned Commissioner of Income Tax Appeals-1, Panaji Goa [‘Ld. CIT(A)’ hereinafter] which in turn correspondingly arisen out of separate orders of assessment passed u/s 143(3) r.w.s. 147 of the Act by captioned assessing officer [‘Ld. AO’ hereinafter] in relation to twin assessment years 2010-11 & 2011-12 [‘AYs’ hereinafter].

2. Since the interwoven issue counselled in these group of appeals is common & identical in nature, on rival party’s request and for the sake of brevity, they are heard together for being disposed off by a common & consolidated order. The adjudication laid in succeeding paragraphs of this order in lead case ITA No 253/PAN/2019 (SR-1), shall *mutatis mutandis* apply to all the remaining (SR- 2 to 10) captioned appeals and be read & treated accordingly.



**3. Tersely stated facts of the lead case are that;**

3.1 The assessee is an individual who for AY 2010-11 filed his return of income [‘ITR’ hereinafter] on 29/07/2010 declaring total income of ₹4,43,860/-. The returned income of the assessee was in first place accepted without variation summarily u/s 143(1) of the Act. Vide notice dt. 31/03/2017, the case of the assessee, after recording reasons and obtaining prior approval from the competent authority was reopened u/s 148 of the Act. The assessee filed a reply stating to treat his ITR filed u/s 139(1) of the Act as the return in response to notice u/s 148 of the Act. Reasons of reopening sought vide letter dt. 12/04/2017 by the assessee was supplied and the objections raised thereagainst vide letter dt. 22/11/2017 was also disposed off by the Ld. AO vide separate order dt. 29/11/2017. The case of the assessee was then taken up for scrutiny and the consequential assessment u/s 143(3) of the Act was passed wherein an undisclosed amount ₹12.50Lakhs received for ‘iron-ore extracted & sold’ was added & brought to tax under the head ‘Income from other source’.



4. Aggrieved assessee filed an appeal u/s 246A of the Act before first appellate authority which was allowed vide para 5-6 which reads as under;

*5. The undisputed facts of the case are that an iron ore mining lease was granted by the government of Goa to Mr. Atmaram Xembu Pai Panandikar (AXP) vide lease dated 20.04.1997, and for a period upto 21.06.2005; extended later upto 21.11.2007. An application was made for further renewal which remained undecided till 12.01.2015. AXP died on 13.12.2003 and the mine along with other assets owned by AXP became part of the estate of AXP with inheritance rights vested with legal heirs. The legal heirs of AXP decided to get the said lease to transfer to a company subsequently called ECO Mining & Construction Pvt. Ltd. However, no approval from government was received. The legal heirs thereafter entered into two agreements and two MOUs in April 2009. Effect of the two agreements and two MOUs put together was to handover the control of the mine. However, certain acts were to be performed before final paper work could be done, including obtaining sanction from the government of the Goa. Therefore, an advance was received rather than the full consideration. The taxability of the advance is the subject matter of dispute. The Assessing Officer has*



*charged it to tax under the head income from other sources, whereas it is contention of the appellant that the amount is merely an advance and therefore, it cannot be charged to tax at this stage because certain acts are to be done by the prospective purchaser, which may or may not get done. Keeping this uncertainty in mind the amount, it is claimed is an advance and accordingly, it cannot be charged to tax. The appellant has raised several legal and substantive grounds of appeal. However, one overriding fact which has been highlighted is that the entire mining business in Goa has been stopped by the Hon. Supreme Court; all leases had also been cancelled by the Hon. Court twice, this naturally brought the mining industry into stand still. This forced the prospective buyer and the person who advanced money Mrs. D. Nitya Reddy to terminate the MOU and raise demand for refund of the amount paid. The amount in question has subsequently been returned to Mrs. Reddy. The relevant portion of the submission is extracted herewith:*

*This naturally forced Mrs D. Nitya Reddy to terminate the MOU dated 22.04.2019 and the said buyer raised demand for refund of the advance paid to the Appellant. The major contents of the notice dated 03.12.2018 received from the buyer are as under:*



***"It is communicated to us that there has been a lapse of nearly 10 years since we have signed the MOU. As such with the passing of a reasonable amount of time, it is clear and evident that there is now a frustration of contract and the terms and conditions of the MOU cannot be adequately and suitably performed by the parties to the MOU. I have been willing to perform the terms and conditions of the MOU and also been following this with your co-legal heirs; However it was apparent that nothing moved with the Government due to various factors including Court interventions. It is thus evident that subsequent to its formation and without fault of either party the MOU is now incapable of being performed due to the reason as stated above. In the circumstances I do hereby terminate the MOU for Sale of Shares dated 22.02.2009 as the performance of the same is impossible and call upon you all to repay the advance amount within 30 days without protest or demur."***

*The Appellant had no other option but to refund the advance received and accordingly refunded the whole amount on 18.01.2019. This fact itself shows that the approach taken by AO was pre-matured and without any legal substance.*

*6. In view of the overriding position that the money in question has been refunded, there cannot be a question of taxing the money. I am precluded from even considering the issue on account of this overriding factor that the amount has been returned. Therefore, there cannot be an issue of charging the said amount to tax because now there is no such income. On account of this overriding fact I have no option but to direct the AO to delete the addition. He may, however, before giving effect to the order, verify whether the said amount has actually been returned. And if returned, the addition may be deleted. As such, the addition stands deleted.* (Emphasis supplied)

5. Aggrieved by the like action adopted by the Ld. CIT(A) in granting the relief to captioned assessee, the Revenue came in present bunch of appeals on following common grounds;

1. *The order of the learned CIT(A) is opposed to law and facts of the case.*



2. The Ld. CIT(A) has erred in appreciating the assessment made u/s. 143(3) r.w.s. 147 in assessing the income as Income from Other source as there is no transfer of shares and only advances are received.

3. The CIT(A) has erred in allowing the appeal in favour of the assessee holding that the money in question has been refunded by the assessee by terminating the MOU for Sale of shares without verifying whether the said amounts has actually been returned or not.

4. The Ld. CIT(A) has erred in allowing the appeal of the assessee by admitting additional evidence in contravention to Rule 46A and without granting opportunity to AO to give comments/ counter the same.

5. The Ld. CIT(A) has failed to appreciate that the contention of the assessee that the amount is merely an advance is nothing but deferral of revenue recognition in order to avoid and evade taxation.

6. The Ld. CIT(A) has failed to appreciate the facts that the complex web of agreement was drawn by the assessee only to disguise the consideration received for the iron ore extracted and sold from the mine which is evidenced by the entries in the respective bank accounts.

7. The Ld. CIT(A) has failed to appreciate the fact that other two legal heirs i.e. Shri Vishwanath Panandikar and Shri Kamlesh Panandikar, had shown the receipts received on account of the agreement in their return of income for AY 2011-12 and AY 2012-13 as Capital Gain since during the year under consideration for



*AY 2011-12 and AY 2012-13 there were actual transfer of shares.*

*8. Considering the facts and circumstances of the case order of the Ld. CIT(A) is not acceptable since prosecution complaint is filed by the Department and the same is pending in Court and accordingly the case is covered in the exception as prescribed in Para-10(f) of the CBDT's Circular No.3/2018 dt 11.07.2018 and subsequent Circular No.18/2019 dt 20.08.2018.*

*9. The appellant craves to leave, add, amend or alter any of the grounds of appeal either before or at the time of hearing.*

6. In the course of hearing, the Ld. DR Reddy at the very outset has commonly alleged that; the impugned orders not only suffered from compliance of rule 46A of Income Tax Rules, 1962 ['IT-Rules' hereinafter] but transgressed the provisions of s/s (1) of section 251 and s/s (6) of section 250 of the Act. The sum & substance of Revenue's contention is that, the income in the hands of recipient was chargeable to tax in accordance with provisions of section 4 of the Act, the Ld. CIT(A) however turning blind eye thereto granted the relief by deleting the impugned additions. While doing so, the impugned adjudications were culminated; (a) without verification of facts narrated or brought before him by all



the assessee's, (b) without satisfying the litmus test of rule 46A (supra) in admitting the fresh evidences (c) without carrying out or causing any enquiry into the claims of all the assessee's made on the basis of such admitted fresh evidences (d) without granting an opportunity to the Ld. AO to repute the claims made and (e) without calling for the remand reports from the field etc. In cementing that the impugned orders infringed the provisions of s/s (1) of section 251 of the Act, the Ld. DR submitted that, the original assessment in these cases of captioned assessee were not best judgement assessments, but were framed u/s 143(3) r.w.s. 147 of the Act, therefore the purported action of the Ld. CIT(A) in directing the Ld. AO to verify the ambulated claim before giving effect to impugned orders are unsustainable in law. Further drawing our attention to threefold facets inscribed in s/s (6) of section 250 of the Act, the Ld. Reddy also expostulated that, the impugned adjudications were culminating without first being identifying the issue of dispute, clearly stating the decision arrived thereon and reasoning therefore.



7. *Per contra*, the Ld. Senior counsel Mr Pikale after solidifying factual matrix as narrated by the Revenue in relation to present bunch of appeals, has candidly drawn our attention to the Ld. Co-ordinate bench's common adjudication rendered in ITA No 291 & 292/PAN/2019 dt. 21/11/2022 and submitted that, in similar facts, circumstances & aforesaid violation of provisions of law, the Tribunal has set-side the orders of first appellate authority. Therefore, the impugned orders under challenge alike may also be set-aside. The Ld. Pikale also stated that, since it were the case of physical proceedings before the tax authorities below, the bench may at its option decide to remand these files back to the first appellate authority & stage as it deem fit but with a clear direction for speedy disposal.

8. We have heard the rival party's submission and subject to rule 18 of ITAT-Rules perused the material placed on record and considered the facts of the case in the light of settled position of law and noted that, there is much less dispute between rival parties that, the impugned orders suffered from the compliance of



provisions of rule 46A of IT-Rules, s/s (1) of section 251 and s/s (6) of section 250 of the Act. This being the clinching factual position, the impugned orders in first place without necessitating double doing deserves to be set-aside for their remand to the files of Ld. CIT(A) at the stage of their institutions for *de-nova* adjudications with a direction to deal the disputed addition in accordance with provisions of section 4 in particular and other applicable provisions of law in general and pass separate speaking orders in terms of s/s (6) of section 250 of the Act, Ordered Accordingly. The grounds accordingly stands partly allowed.

**9. In result, this bunch of appeals of the Revenue stands PARTLY ALLOWED for statistical purposes in aforesaid terms.**

U/r 34 of ITAT-Rules, this order is pronounced in the open court on date mentioned herein before.

**-S/d-  
PAVAN KUMAR GADALE  
JUDICIAL MEMBER**

**-S/d-  
G. D. PADMAHSHALI  
ACCOUNTANT MEMBER**

Panaji/Dt: 25th February, 2025. (6AM:JM4)

**Copy of the Order forwarded to :**

- |                   |                                   |                              |
|-------------------|-----------------------------------|------------------------------|
| 1. The Appellant. | 2. The Respondent.                | 3. The CIT(A)/NFAC Concerned |
| 4. PCIT Concerned | 5. DR, ITAT, Panaji Bench, Panaji | 6. Guard File                |

By Order,  
Sr. Private Secretary / AR ITAT, Panaji.