# IN THE INCOME TAX APPELLATE TRIBUNAL, PANAJI BENCH, GOA

**BEFORE HON'BLE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**AND**

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

**ITA No. 132/PAN/2025**

**Assessment Years: 2006-2007**

M/s Salgaocar Mining Industries Pvt Ltd.

Salgaonkar Bhava, Altino, Panaji, Goa-403001.

PAN: AABCS8862N ....... ***Appellant***

**V/s**

Dy. Commissioner of Income Tax,

Circle-1, Margao, Goa. ....... ***Respondent***

**Represented**

Assessee by: Mr Sukhsagar Syal ['Ld. AR']

Revenue by: Ms Rijjula Uniyal ['Ld. DR']

Date of conclusive Hearing : 20/01/2026

Date of Pronouncement : 29/01/2026

**ORDER**

**PER G. D. PADMAHSHALI;**

This assessee's appeal filed u/s 253(1) of the Income-tax Act, 1961 ['**the Act**'] impugns the order dt. 20/03/2025 passed u/s 250 of the Act by Commissioner of Income Tax(Appeals-2), Panaji ['**Ld. CIT(A)**'] which in turn dealt with order dt. 20/12/2011 passed u/s 144 of the Act by DCIT, Circle-1, Margao Goa ['**Ld. AO**'] anent to assessment year 2006-07.['**AY**']

2. ***Pertinent facts of the case, tersely stated are that;***

*2.1* The assessee is a private limited company engaged in the business of mining & export of iron ore minerals. For the year under consideration the assessee filed its return of income on 28/11/2006 declaring total income of ₹107,13,45,220/-. The said return of income of the assessee company in first instance without variation was summarily processed by the Revenue u/s 143(1) of the Act.

*2.2* Subsequently, vide notice dt. 29/12/2008 issued u/s 143(2) of the Act, the case of the assessee selected for scrutiny and the assessment u/s 143(3) of the Act vide order dt. 28/03/2016 was completed assessing the total income in variation to the income returned at ₹120,50,75,226/-. By rectification order dt. 12/12/2009 the assessed total income rectified to ₹120,38,98,944/- u/s 154 of the Act.

*2.3* Vide notice dt. 14/03/2011 issued u/s 148 of the Act the case of the assessee after recording the reasons reopened u/147 of the Act to reassess the income escaped the assessment. For the non-compliance on the part of the assessee, the assessment u/s 144 r.w.s. 147 of the Act culminated by an order dt. 20/12/2011 wherein the Ld. AO made to additions owning to; (1) difference of business revenue/receipts of 87,62,350/- remained undisclosed in the return of income and (2) disallowance of excess depreciation of 1,82,643/- .

*2.4* Aggrieved assessee company preferred an appeal u/s 246A r.w.s. 249 of the Act before the Ld. CIT(A) on 25/01/2012 which was instituted for first appellate adjudication vide Appeal No : CIT(A)/PNJ/10310/2019-20 and dismissed by the Ld. CIT(A) by an order dt. 17/03/2025.

2.5 Aggrieved by the actions of tax authorities below, the assessee company came in present appeal on following grounds including additional ground;

1. ***On the facts and circumstances of the case and in law, the learned CIT(A) ought to have held the reassessment proceedings were without jurisdiction and bad in law in terms of section 147 to 151 of the Act.***

2. ***On the facts and in circumstances of the case and in law, the learned CIT(A) erred in confirming the addition on account of alleged difference in receipt of 87,62,350/-***

3. ***The learned CIT(A) has erred in passing the order in gross violation of principle of natural justice in as much as he has erroneously attributed failure to file several details to the appellant without ever calling for such details at all.***

4. ***The appellant craves leave to add, alter, modify or amend any ground(s) of appeal.***

3. Drawing our attention to application dt. 16/01/2026 made u/r 11 of Income Tax Appellate Rules, 1963 at the outset the Ld. AR submitted that, the first ground of appeal raised in appeal memo (Form No 36) which alleges the action of Ld. CIT(A) for not holding the impugned assessment one as without jurisdiction and bad in law in terms of section 147 to 151 of the Act, raised first time before the Tribunal is to be admitted for adjudication in the light of *'National Thermal Power Co. Ltd. Vs CIT'* [1998, 229 ITR 383], and CIT Vs Sinhgad Technical Education Society [2017, 397 ITR 344] as no fresh facts need to be examined for adjudicating this legal ground. Insofar as merits of the addition of alleged difference of revenue/receipts is concerned, the assessee claimed that the details of revenue/receipts earned by it duly accounted for and same were there before the Ld. AO in original as well as reassessment proceedings.

4. It was also submitted by the assessee that, the alleged difference of revenue with the help of audited financial statements were also explained to Ld. CIT(A) in the course of first appellate proceedings. Though no formal reconciliation statement could be adduced in the course of first appellate proceedings, but the Ld. CIT(A) could hardly ask for the supporting details of leger extracts & invoices to prove the claim of the assessee. Alleging the violation of principle of natural justice, the Ld. AR seeks to turn down the impugned order in toto.

5. *Per contra*, the Ld. Uniyal at the outset objected the admission of legal ground raised first time before Tribunal and in doing so it was pointed out from ground no 1 that the assessee in real sense has not raised any legal ground alleging the violation provisions of section 147 to 151 but claiming the Ld.

CIT(A) ought to have held the assessment one as without jurisdiction and bad-in-law in terms of section 147 to 151 of the Act. This assessee's post fact plea is a sheer example of principle of *'Lex non cogit ad impossibilia'* that is asking the Ld. CIT(A) to do impossible. Admittedly, there was no legal ground alleged in Form No 35, and being so, the Ld. CIT(A) not duty bound to look into such plea in view of restriction placed u/s 250 r.w.s. 251 of the Act. Therefore, the inaction of Ld. CIT(A) in absence such legal ground before him cannot be alleged in subsequent stages. On merits of addition, the Ld. DR reiterating the findings of both the tax authority below argued that, the assessee is a luxury litigant as at first two stages it not only withheld the crucial information relating to addition but also it remained undisputed that, the assessee choose not to file the return at all, therefore the request for remand should be rejected.

6. Praying for dismissal of appeal the Ld. Uniyal's argued that, if the twin additions made by Ld. AO and sustained in appeal were baseless, devoid of facts or without jurisdiction then appellant could have not chosen to agitate only one of such two additions in present appeal.

7. We have heard the rival party's submission and subject to rule 18 perused the material placed on record and considered the fact in the light of settled position of law which were also forewarned to the respective parties for their rebuttal. We note that, for the purpose of reassessment of alleged escarpment of income the Ld. AO assumed the jurisdiction vide first notice dt. 14/03/2011 and called upon the appellant to file the return in response thereto within a period 30days of service thereof. In response thereto appellant vide letter dt. 11/04/2011 sought the

reasons for reopening. Informing the settled position of law laid down by Hon'ble Apex Court in *'GKN Driveshaft (India) Ltd. Vs ITO'* [2003, 259 ITR 19] the Ld. AO agreed to furnish the reasons subject to filing of return in response notice issued u/s 148 of the Act.

8. In the event of appellant's failure to file return the Ld. AO vide letter dt. 27/06/2011, 06/07/2011, 04/11/2011 accorded more than enough opportunities to make good the deficiency *vis-à-vis* non-compliance. The appellant however not only denied complying therewith but even gone further in alleging the proceedings being initiated/conducted in *'abuse of powers with anterior motive'* (Pg 239 of P/B). The appellant did not stop there but vide even letter dt. 08/11/2011 the appellant threatened the Ld. AO with its inclination to initiate Contempt of Court Proceedings against him personally and also report

the matter to higher-up in New Delhi including Chief Vigilance Commissioner. Faced with the situation, the Ld. AO after serving a show cause notice u/s 144 reassessed the total income to best of his judgement by bringing to tax (1) difference in receipt of ₹87,62,350/- arising from three parties viz; M/s Salgaocar Shipping Co. Pvt. Ltd., M/s Salitho Ores Pvt. Ltd. & M/s Salgaocar Shipping Co. Pvt. Ltd., and (2) ₹1,82,643/- excess depreciation claimed on block of ship owning to incorrect b/f of opening WDV etc. We further note that, in first appellate proceedings the appellant tried to explain the difference with reference to audited financial statement, but for the want of detailed reconciliation statement and supporting ledger extracts, invoices etc., the efforts of the appellant went futile. Thus, for the want of clarificatory material and satisfactory explanation, the Ld. CIT(A) upheld the impugned addition.

9. ***First thing first, legal ground raised first time before Tribunal;*** without reproducing rule 11 and rule 29 (supra) and provisions of section 254(1) of the Act it shall be suffice state that, a harmonious of former provisions of the statute coupled with basic purpose underlying the appellate powers of the tribunal which is to ascertain the correct tax liability of the assessee leaves no manner of doubt that the tribunal while exercising its appellate jurisdiction, has discretion to allow to be raised before it knew or additional questions of law arising out of the record before it. Subject to rule 18 (supra) the holistic perusal of material placed on records reveals that, the essential, cogent and influential information *vis-à-vis* facts relating to jurisdictional defects, the outdoing of provisions of section 147 to 151 and the non-compliance of or non-adherence to the prescribed procedural of law by the Ld. AO is neither available

on hand with Tribunal nor been bought by the appellant. Therefore, the legal ground if any to be admitted at the threshold deserves to be rejected.

10. This so because, the former information and corroborative documents would decide as to whether such would require examination a fresh or not. In the absence of such information, corroborative evidence and necessary explanation as to how looking thereinto would not require fresh examination, the first ground of appeal cannot be entertained for its admission. It shall be apt to make a reference to Ld. Special bench decision in case of *'All Cargo Global Logistic Ltd. Vs DCIT'* [2012, 21 taxmann.com 429 (Mumbai)] wherein the Tribunal after threadbare consideration of catena of judicial precedents including the Hon'ble Apex Court decision rendered in *''National Thermal Power Co. Ltd. Vs CIT' (Supra),*

ceased to issue holding that, tribunal has jurisdiction to examine a ***question of law which arises from the facts as found*** by the authorities below and having a bearing on the tax liability of the assessee.

11. In the present case, ostensibly there are no findings of facts either noted in the assessment order or the impugned order under challenge which can be vouched in view of the former judicial precedents. For the reasons and placing reliance on even settled position of law, we see no reasons in concurring with the Revenue's stand for rejecting the ground for admission on second contention.

12. Though not material now as admission of ground raised in appeal memo first time before Tribunal already rejected, but necessary state that the answer to the revenue's question *'as to whether ground taken first time before the Tribunal in Memorandum of appeal*

*(Form No 36) can it be called as additional ground?'*

found at para 7.2 of Ld. Special Bench decision as;

> ***As mentioned earlier, the fact is that jurisdictional question as posed before the Tribunal had not been raised before the lower authorities. It has also been held that question No. 3 before the Ld. CIT(A) is qualitatively different from question No. 1 before us. Therefore, the question does not arise out of the orders of the lower authorities. The decision in the case of Pokhraj Hirachand becomes important in the light of the fact that the word used in section 263 (1) is "aggrieved", and grievance can arise only if the matter has been taken up before any of the lower authorities on which decision has been rendered or not. However, the question which has not been raised before any of the lower authorities and obviously not decided by any one of them, cannot lead to a grievance in respect of which a ground can be validly taken in the memorandum of appeal. Therefore, we tend to agree with the Ld. Standing Counsel that ground No. 1 in the memorandum of appeal cannot be a ground validly taken as a grievance from the order of lower authorities. The question whether it can be admitted as an additional ground is all together a different matter. Thus, it is held that the ground as it stands could not have been taken in the memorandum of appeal.*** ***(Emphasis added)***

13. Insofar as the merits of impugned addition is concerned, we note that, in the event of appellant's reparative failure to file return and explain the difference in revenue/receipt with the help of cogent evidence the Ld. AO after copious opportunities culminated the proceedings to the best of his judgement u/s 144 of the Act. In view of the

appellant's conduct and baseless allegations coupled with its complete non-cooperation, we could hardly see any infirmity in the action of the Ld. AO in coming to such conclusion.

14. After vouching the facts placed on record, we are mindful to state that, the only ground (ground no 3) of appeal which alleged the violation of principle of natural justice in a first appellate proceedings although is unsolid but in considered view crucial for the purpose of determination correct tax liability.

15. The bare perusal of impugned order does not hint sight complete lack of hearing opportunity, but reasonableness thereof may be. Because the appellant tried to explain difference by adducing clarificatory evidences viz; audited financial statement but without reconciliation statement and supporting ledger extracts, invoices etc., The

appellate claimed that it lacked sufficient time & opportunity to adduce clarificatory evidence and there is nothing on record to suggest otherwise. In view thereof, in the larger interest of justice and placing reliance on Hon'ble Delhi High Court in 'CIT Vs Jansampark Advertising & Marketing (P) Ltd.' [2015, 231 Taxman 384] we considered it necessary to remit the impugned issue for proper verification to the file of Ld. CIT(A) by setting aside the impugned order on this score alone. Ergo order accordingly. The ground no 3 accordingly stands party allowed for statistical purposes and all other grounds stands dismissed.

16. **In result, the appeal of the assessee is PARTLY ALLOWED in aforestated terms.**

In terms of rule 34 of ITAT Rules, 1963 the order pronounced in the open court on date mentioned hereinbefore.

| -S/d- | -S/d- |
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| **PAVAN KUMAR GADALE** | **G. D. PADMAHSHALI** |
| **JUDICIAL MEMBER** | **ACCOUNTANT MEMBER** |

Panaji/Dt: 29th January, 2026.

**Copy of the Order forwarded to :**

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

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