



सत्यमेव जयते

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. 038/PAN/2025

Assessment Years: 2013-14

Bandekar Brothers Pvt. Ltd.

Post Box No. 11, Suvarna Bandekar Bldg.,

Swatantra Path, Vasco-Da-Gama

Goa-403802

PAN: AAACB5502B

..... Appellant

V/s

Asstt. Commissioner of Income Tax,

Circle-2(1), Panaji, Goa.

..... Respondent

Represented

Assessee by: Mr Pramod & Mr Shriniwas Deshpande ['Ld. AR']

Revenue by: Mr M Satish & Mr Renga Rajan ['Ld. DR']

Date of conclusive Hearing : 12/01/2026

Date of Pronouncement : 11/02/2026

ORDER

PER G. D. PADMAHSHALI;

This assessee's appeal filed u/s 253(1) of the Income-tax Act, 1961 [**the Act**] impugns order dt. 27/12/2024 passed u/s 250 of the Act by National Faceless Appeal Centre, Delhi [**Ld. NFAC**] which in turn arisen out of order dt. 28/03/2016 passed u/s 143(3) of the Act by ACIT, Circle-2(1), Panaji Goa [**Ld. AO**] anent to assessment year 2013-14.['AY']



2. The sole & substantive grievance came for adjudication in this appeal revolves around determination of true nature, character & substance of stamp duty paid to the 'Government of Goa' [**GoG**] as consideration for grant of mining licence/lease for a period of twenty years and deductibility thereof (if any) under the provisions of the Act.

3. Succinctly stated pertinent facts arising out of the case records are that;

3.1 The assessee is a private limited company engaged in the business of mining & export of iron ore minerals, transport and other allied activities. For the year under consideration the assessee filed its return of income on 28/09/2013 declaring total income of ₹54,10,05,410/-. 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.



3.2 Subsequently, vide notice dt. 03/09/2014 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 wherein the Ld. AO *inter-alia* disallowed a sum of ₹16Cr. paid to the Government of Goa in the form of stamp duty towards renewal of mining lease/licence for a period of twenty (20) years which was claimed as revenue expenditure in the year of payment u/s 37(1) r.w.s. 43B of the Act. While disallowing so the Ld. AO treated the stamp duty payment as consideration for acquiring mining rights being a capital asset within the meaning of section 2(14) of the Act, which allowed the assessee to extract iron ore minerals and generate a circulating capital in the form of 'stock-in-trade' and consequential revenue realisation on sale in ordinary course of its business.



3.3 Aggrieved by all four disallowances and the assessment as such, the assessee preferred an appeal u/s 246A r.w.s. 249 of the Act before the Ld. NFAC who partly allowed the assessee's appeal by; (a) partially vacating disallowance made u/s 14A of the Act, (b) reversing later two consecutive disallowances made towards construction of roads/temples and disallowance of additional depreciation etc. The Ld. NFAC however, after recording his independent & concurrent findings in line with the findings rendered by the Ld. AO and placing reliance on alike judicial precedents, upheld the disallowance towards 'stamp duty' paid to State Government of Goa for renewal of mining lease/licence for a period of twenty years holding it to be a payment for acquiring a capital asset within the meaning of section 2(14) of the Act and further turned down the alternative ground of consequential depreciation thereon.



3.4 Aggrieved by the actions of tax authorities below, the assessee company came in present appeal on following sole & substantive ground (as raised & in Form No 36 and endorsed through revised grounds of appeal filed vide separate letter dt 03/04/2025) as;

‘The Learned Commissioner of Income Tax (Appeals) has erred in confirming the disallowance of Renewal Charges of Mining Lease of Rs16,00,00,000/- He failed to appreciate that the learned Assessing Officer was wrong in holding the expenditure as Capital Expenditure. He ignored the fact that the appellant was in mining business since past several years in the same mine, hence charges for renewal of mining lease was entirely a revenue expenditure. He failed to appreciate that the Appellant had not purchased any new asset. The existing mining business could not have been continued unless lease agreement was executed; hence the expenditure was revenue expenditure in nature. He failed to appreciate that the entire expenditure ought to have been allowed as deduction being paid to the Government on payment basis. Alternatively, charges pertaining to earlier years i.e. for the years 2007-2012 ought to have been allowed as deduction in the current assessment year on actual payment basis.’



4. In the course of hearing, the Ld. Counsel Sr Deshpande after reiterating former facts from the records submitted that; since incorporation in the year 1973 the appellant is in mining business and there has been no change in the activities/operations. By 'The Goa and Daman, Diu Mining Concession (Abolition & Declaration as Mining Lease) Act, 1987 [**GDDMC**]' the perpetual mining & mining concession was then in force in the union territories including Goa was abolished and the provisions of Central Act 'Mines & Minerals Development & Regulation Act, 1957 [**MMDRA**]' made applicable whereby the appellant was granted a long-term lease/licence and thus allowed to extract iron-ore for a period 20 years from 22/11/1987 to 21/11/2007. Upon the expiry of former term, the renewal for a similar period of 20 years commencing from 22/11/2007 was proposed/ordered by GoG vide its letter dt.



21/02/2013 by requiring assessee to pay ₹16Cr therefore. Pursuant to such order the assessee on 06/03/2013 paid a stamp duty of ₹16Cr in the fiscal year relevant to assessment year under consideration. Though the payment for renewal was discharged in the year under consideration, the lease deed vide registration no. 565/2015 however was executed subsequently on 08/06/2015. The stamp duty so paid for renewal of mining lease being a recurring for every such term renewal hence was treated as 'revenue expenditure' and claimed as deductible u/s 37(1) r.w.s. 43B of the Act in the year of payment. The Ld. AR further confirmed that, beside above claim, no provision for such liability/expenditure towards stamp duty was made or recognised either in the year when such renewal was first due i.e., AY 2008-09 or in the year when the mining lease deed is actually registered i.e., AY 2016-17.



5. It was also submitted that, out of the entire area of land under mining operations, part thereof was owned by the assessee company and balance part thereof was taken on lease from the private parties/owners. The State GoG did lease no piece of land for mining activities/operations, therefore there was **neither** a transfer of any asset or rights therein **nor** dispossession of any asset in favour of assessee by the GoG. The payment to GoG was exclusively for grant of mining lease/licence which in turned allowed or permitted the assessee company for winning of iron-ore minerals. The consideration for grant of such licence/permission was discharged by way of stamp duty to the State ex-chequer, as such is payable recurringly on term-on-term basis (20 years/term) as and when renewal takes place, therefore such stamp duty payment is akin to legal expenditure incurred in keeping mining business alive as going concern.



6. To buttress the allowability of stamp duty paid for renewal of mining lease as revenue expenditure analogous to legal expenditure, the Ld. AR placed strong reliance on the decision of Hon'ble Jurisdictional Bombay High Court in the case of '*CIT Vs Cinceita (P) Ltd.*' [1982, 10 Taxman 82, / 1982, 137 ITR 652 (Bom)], '*CIT Vs Bank of India*' [1987, 168 ITR 731 (Bom) / 32 Taxman 462], '*Richardson Hindustan Ltd. Vs CIT*' [1987, 63 CTR 16 (Bom) / 1987, 32 Taxman 466]. In addition to former judicial precedents, the Ld. Shrinivas Deshpande pressed into service the decision of Hon'ble Courts rendered in case of '*Plantation Corporation of Kerala Ltd. Vs CAIT*' [1994, 205 ITR 364 (Ker)], '*CIT Vs Gopal Associates*' [2008 12 DTR 20 (HP)] and contended that, the form of payment *per-se* is sufficient to decide the allowability of deduction u/s 37(1) of the Act, and the same is supported by former precedents.



7. *Au contraire*, placing reliance on cords of decision rendered by the Hon'ble Supreme Court and Hon'ble High Courts, the Ld. DR M Satish argued that grant of mining lease is one form of transfer whereby right or interest attached to immovable property is indirectly transferred. Such right/interest in immovable property *per-se* is a distinct & separable property falling within ambit capital asset as defined by section 2(14) of the Act. On the other hand, there exist a direct nexus between cost incurred in such indirect transfer and the rights/interest granted/acquired under such mining lease. The cost incurred in acquiring such rights/interest partakes its character from an underlying subject matter of transfer namely capital asset, hence it is a capital expenditure for the purpose of the Act. Such cost being capital in nature & not being a revenue in substance hence not deductible u/s 37(1) of the Act.



8. Backing up the former arguments, the Ld. DR Renga Rajan tried to strengthen the Revenue's case by advancing that, the incorrect nomenclature used in granting the licence to allow/permit the appellant to extract iron-ore minerals as 'mining lease' and the nomenclature used for discharge of consideration for issuing such licence to mine as 'stamp duty' *de-facto* instrumental in creating dispute over nature of cost incurred and its deductibility under the provisions of the Act. Drawing our attention to the threefold contention raised by the assessee, the Ld. DR rebutted that; for allowability of any expenditure u/s 37(1) of the Act such expenditure is to pass a test of five conditions *inter-alia* the litmus test that, '*the expenditure must be revenue in nature and not for acquiring any capital asset or bringing about any enduring advantage*'. In the present case admittedly assessee paid sum as consideration was towards



grant of licence, and licence being a capital asset within the meaning of section 2(14) of the Act, fails to pass the former litmus test, therefore *dehors* the assessee from claiming it u/s 37(1) of the Act. The right of winning minerals acquired through mining-lease is capital asset by nature & character thus also exigible to capital gains under the provisions of the Act when transferred. Once the nature & character of transaction is established as capital acquisition, then; (a) the mode/nomenclature of payment in acquiring such capital asset, (b) the frequency of payment such as annual, term basis or onetime etc., and (c) the stage of discharge of payment towards viz; first instance/grant of licence or at the subsequent renewal all these factors in essence are immaterial. This is because, none of these factors would intrinsically change the substance & character of capital expenditure to revenue.



9. Further placing reliance on the impugned orders, both the Ld. DR have candidly solidified that, once impugned expenditure incurred in acquiring mining licence/lease is held as '*capital in nature & character*' and not allowed u/s 37(1) of the Act as 'revenue expenditure' then same should be capitalised for qualifying consequential depreciation (if any) thereon. Appreciating the sincere submission of the Revenue, the Ld. Jr Deshpande propped for higher depreciation by categorising it into an intangible asset within clause (b) of section 2(11) of the Act.

10. We have heard the rival party's submission & arguments, subject to rule 18 of Income Tax Appellate Rules, 1963 ['ITAT-Rules'] perused the material placed on records and considered the facts of the case in the light of settled position of law which were primed to the respective parties for their rebuttal.



11. We note that, the appellant predominantly engaged in business of mining iron-ore minerals in the state of Goa over two categories of lands [**MINE AREA**] viz; (a) pieces of land owned by appellant etc., and (b) pieces of land owned by other private parties which are taken on long-term lease by the appellant. Admittedly, the Central or State Government leased no piece of land to the appellant for the purpose of mining/winning of iron-ore minerals. Though former twin types of lands were in complete possession & at the disposal of appellant, the prospecting of minerals or / and mining of minerals therefrom required a licence/permit which is regulated under the provisions of MMRDA. The mining licence was granted by entering into mining-lease agreement between the GoG and the appellant. The first renewal of mining licence granted to the appellant as solidified that it was expired in the year 2007.



12. The GoG allowed the appellant to continue mining operations *that is winning of iron-ore minerals* from mining area even after the expiry of mining licence in 2007 without their renewal till 2013. Subsequently, for *post facto* renewal of mining licence the GoG vide its office order dt. 21/02/2013 called upon the appellant to pay a sum equal to 15% of royalty to be payable on iron-ore minerals permitted to be extracted/winned over a period of term of renewal, subject to maximum ceiling of ten times of iron-ore minerals permitted to be extracted/winned over a period of term of renewal. The permissible extraction or winning of iron-ore minerals in the appellant case for the purpose of renewal was determined at 8Lakh Tonne Per Annam [‘T/p.a.’] for a period of 20 years commencing from 22/11/2007 to 21/11/2027. Accordingly, on 06/03/2013 appellant paid sum of ₹16CrS being the maximum amount of



consideration payable for renewal as contemplated in rule 3A of Indian Stamp Act [‘ISA’]. The said payment was discharged/paid by the appellant in the form of ‘franking/stamp duty’ to the GoG *ex-chequer*. Vide letter dt. 05/01/2015 second renewal of mining-lease was ordered post facto and was registered on 08/06/2015 wherefore a further sum of ₹80,00,413/- was incurred towards its registration. It is imperious to also note that in addition to aforestated considerations paid & expenditure incurred respectively for renewal of mining licence/lease & its registration, a periodic payment of royalty computed based on prescribed *ad-valorem* rate with reference to grade (quality) and actual quantity of extraction or winning of iron-ore minerals from the mining area, were also paid/discharged by the appellant in the respective years of extractions/winning of iron-ore minerals to the state *ex-chequer*.



13. Coming to climax, we note that, the appellant contended former three payments as revenue in nature & character and claimed them respectively in the year of payments u/s 37(1) r.w.s. 43B of the Act by debiting the Profit & Loss A/c prepared for the respective years which were also subjected to audit under both the provisions of Companies Act, 1956/2013 and u/s 44AB of the Act as well. Out of these three payments, later sequential two payments pertaining to; (a) expenses/charges etc., paid for registration of second mining-lease renewal, & (b) periodic royalty payments etc., paid on the basis of actual extraction/winning of iron-ore minerals, present both the parties have no disagreement about their nature & character as 'revenue expenditure' and their consequential deductibility as general revenue expenditure in the year of payment u/s 37(1) r.w.s. 43B of the Act.



14. The dispute solely relates to former first payment of ₹16Cr. made to the GoG by the appellant for renewal of mining lease. The appellant claims it as revenue in nature and thus deductible u/s 37(1) of the Act. *Per contra*, the Revenue refutes the appellant's claim contending it to be a capital expenditure, therefore not allowable u/s 37(1) of the Act. The appellant's claim for deductibility is founded on threefold premises viz; (1) the payment is for lease and is recurring in nature (2) the payment is made in the form of 'stamp duty' akin to legal expenditure and (3) renewal of lease did bring no new capital asset into existence for appellant, that is to say renewal of mining lease cannot be equated with acquisition of capital asset. Without prejudice to above claim, the appellant in its solitary ground of appeals, tendered an alternate claim for consequential depreciation u/s 32 of the Act, if same is held to be capital expenditure.



15. In our mindful understanding, nature & character of mining-lease entered, registered and executed between GoG and the appellant can solitarily determine nature & character of impugned stamp duty payment, thus deductibility thereof can be decided. In view thereof we first examined the mining lease transaction in the light of provisions of parental Mine Act, 1952 [‘MA’] and MMRDA. We note that the parental Mine Act defines the term ‘**Mine**’ u/s 2(j) as *‘means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on’* Whereas the term ‘**Minerals**’ is defined u/s 2(jj) (supra) to *‘means all substances obtainable from the Earth through mining, digging, drilling, dredging, hydraulicing, quarrying, or any other operation. This definition explicitly includes mineral oils, which encompass natural gas and petroleum.*



16. For the purpose of adjudication, parties to dispute also emphasized noting of certain terms 'Minerals', 'Mining-Lease' and 'Leased-area' from section 2 of MMDRA and same reproduced as;

(a) '**Leased area**'; means the area specified in the mining lease within which mining operations can be undertaken and includes the non-mineralised area required and approved for the activities falling under the definition of mine as referred to in clause (i);

(aa) '**Minerals**' means all minerals except mineral oils.

(c) '**Mining Lease**'; means a lease granted for the purpose of undertaking mining operations, and includes a sub-lease granted for such purpose;

(d) '**Mining operations**' means any operations undertaken for the purpose of winning any mineral;

A. Mining-Lease, nature & character;

17. In the context of present dispute, a combine reading of former provisions of both MA & MMDRA reveals us that, excavation i.e., mining operations & more particularly **winning of any mineral** from specified area (referred as 'lease area') is permitted by



way of grant of right in the form of licence/permit and such licence/permit is granted/conveyed through registered 'mining-lease' agreement. The registered mining-lease principally is a licence or permit authorising a lessee/licensee a right to undertake mining operations i.e., winning of minerals from leased-area. Therefore in substance such permit or licence *per-se* is a right granted u/s 4 of MMDRA because without such permit/licence, no person has any right to carry out any mining operations in any area, irrespective of ownership of land/area except under and in accordance with terms & conditions of permit or licence or a mining lease, granted under MMDRA & rules made thereunder. Further we also note that, such licence/permit granted in view of the enabling provisions of section 12A of MMDRA allows the lessee/licensee (i.e., holder of mining-lease) a right to transfer such mining-lease right.



18. This bolstered up clearly that, mining operations i.e., winning of minerals is a lawful right created under the provisions of MA & MMDRA which endows an enduring benefit over a certain period and conveys various rights including right to transfer. Such right is not a commodity to be traded as inventory but an asset capable of generating commodity or stock to be traded for generating regular revenue in the ordinary course of mining business. Therefore this mining/winning right whether granted originally (first time) or by way of renewal subsequently, at all given point of time in our considered view since possessed all the essential attributes of an capital asset including transferability, capable of generating circulating capital i.e., minerals-stock which in turn generated regular revenue for the mining business is uprightly a capital asset within the meaning of section 2(14) of the Act .



19. As to whether mining lease granted for a period of ten years is a capital asset and give rise to a capital gain came for consideration before the Hon'ble Patna High Court in a landmark case of '*Traders And Mines Ltd. Vs CIT*' [1955, 27 ITR 341 (Pat)] where assessee company after purchasing various pieces of land, leased them for a period of 99 years to **surface right** together with certain mica mines located therein. The indenture by which such land was leased with **surface right** held to be transfer of capital asset giving rise to gain tax. The former ratio subsequently found affirmed & followed by the Hon'ble Supreme Court in '*RK Palshikar (HUF) Vs CIT*' [1988 38 Taxman 166 / 56 CCH 217 ISCC]. On a similar line the Hon'ble Apex Court in the case of '*AR Krishnamurthy & Anrs Vs CIT*' [1989 176 ITR 417 / 57 CCH 170 ISCC], while holding grant of mining lease/licence as capital asset and thus surplus on transfer is exigible



to taxation laid out a ratio that, 'transfer' in context of provisions of the Act not only include permanent transfer but also a temporary transfer of title to the property in question and lease of mine for any period would fall within the ambit thereof. A lease of land is transfer of interest in the land and creates a right in *rem*. Therefore, is a capital asset capable of transfer, in consequence sum arising on such of right in *rem* chargeable to gain tax.

20. In context of renewal giving rise to capital asset, we note that, considering former judicial precedents their Hon'ble lordships in '*Rajendra Mining Syndicate Vs CIT*' [1961, 43 ITR 460 (AP)] have also echoed that, renewal of mining-lease endows enduring benefit for a term and confers various rights hence is not a commodity but an asset capable of generating commodity to be sold in mining business.



21. A similar ratio also laid down by the Hon'ble Apex Court in the landmark case of '*Aditya Minerals (P) Ltd. Vs CIT*' [1999, 67 CCH 542] wherein their Hon'ble lordships while dealing with the issue of onetime advance payment for acquiring lease for fifteen years to use land for excavation & other allied purpose have reaffirmed the well settled principle that, any expenditure incurred in acquiring **mining-lease right** over land to win minerals is by very nature & character capital and not revenue. Reiterating the ratio laid in '*Gotan Lime Syndicate Vs CIT*' [1966, 59 ITR 718) their Hon'ble Lordships have also categorically held that, the **payment does not lose its character as capital payment if the sum was determined to pay was capital in nature. Thus, the nature of sum continues to be character of sum payable/paid irrespective of mode and frequency of payment.**



22. In view of aforestated discussion and respectfully following the judicial precedents (supra), we have no hesitation to hold the mining-lease acquired by the appellant through renewal for a period of 20 years effective from 2007 is and continues to be a capital asset in substance in terms of s/s (14) of section 2 of the Act. In result we find no error in actions of both the tax authorities below in construing the renewal of mining-lease in substance as a capital asset as defined by section 2(14) of the Act.

B. Stamp Duty, nature & character;

23. Having decided the nature & character of mining-lease including renewal of such mining lease granted by GoG to the appellant under MMDRA as capital asset, next arises as to whether the consideration paid by the appellant for such renewal in the form of 'stamp duty' by any chance alters the aforestated adjudication?



24. It is an ambler accounting law that, a consideration paid for acquisition of asset not meant for sale as 'inventory' but meant for generating commodity/inventory is to recognised & accounted as capital asset in books and carried as such over the period of its enduring benefit. In doing so, the form, of consideration could hardly influence determination of such transaction, but the substance of such consideration could. That is to say in determining a transaction to be capital or not; (a) a form & nature of consideration or (b) mode its discharged or (c) term or frequency of such payment (onetime, lumpsum or instalments) etc., in such capital transaction would not alter the determination of transaction as 'capital'. The capital transaction, irrespective of form & nature of consideration, is recognised & treated in books as 'capital asset' (fixed asset or non-current asset as the case may be) and is must in accounting & fiscal law.



25. In the present case, the consideration in acquiring mining-lease, a capital asset was discharged by the appellant in the form of 'franking-stamp duty'. Banging upon the '**form**' of discharge, the Ld. Jr Deshpande claimed that such payment constitutes a legal expenditure hence deductible as 'revenue expenditure' in view of the decision rendered in '*CIT Vs Cinceita (P) Ltd.*' (supra).

26. Acceptedly, there is no duality over the deductibility of stamp duty as legal expenditure in general, because such expenditure is incurred in executing a contract or an agreement so as to provide a legal authentication to such executed document which may be used/admissible as evidence in the court of law and thus making legally binding to the parties for settling their respective rights & liabilities thereunder.



27. In the present case, impugned stamp duty was paid not for executing registration of mining-lease but paid as a consideration for granting mining-lease licence as precondition for grant & its registration. Thus, in substance stamp duty was a consideration for acquiring capital asset (mining-lease right), which in turn permitted the appellant to carry out mining operations (winning of minerals) in terms of applicable provisions of MMDRA & MA.

28. In fiscal law what prevails over form is substance. The form of payment though was 'stamp duty' but in substance it was a payment for acquiring of mining-lease right being a capital asset. We continue to hold so because in fiscal law, '*substance over form*' doctrine dictates that the economic reality and true nature of a transaction determine its tax liability/deductibility, rather than its legal form or appearance.



29. A reference can be made to ‘*Super Poly Fabrics Ltd. Vs CCE*, [2008, 217 CTR (SC)] wherein the Hon’ble Supreme Court held that a contract or an agreement has to be read as a whole to understand the purpose and object of the parties agreeing to the laid down terms and conditions. Moreover, *if the terms used in the agreement are not conclusive one has to look at the substance of the transaction over form such that it is not always possible that the name given to a transaction would depict the real nature of the transaction to ascertain valid fiscal impact.*

30. In view of our former discussion and judicial precedents (supra) and applying the doctrine of ‘*substance over form*’, we are of the considered & firm opinion that the appellant’s claim that impugned ‘stamp duty’ is legal expenditure is factually incorrect and without substance, therefore stands rejected.



31. We have given a thoughtful consideration to catena of judicial precedents relied upon by the appellant company and found them distinguishable greatly hence inapplicable to the facts & circumstances of the present case. We say so because, in '*CIT Vs Cinceita (P) Ltd.*' (supra) the case was that the assessee leased entire floor of a standalone building and the *expenditure was incurred in drawing up & registration of valid lease deed.* The expenditure so incurred was treated as legal expenditure thus held as 'revenue'. Similarly is the case of '*CIT Vs Bank of India*' (supra) wherein the Hon'ble Court placing reliance on '*CIT Vs Cinceita (P) Ltd.*' (supra) reiterated that, legal expenditure incurred on renewal of lease on year-to-year basis being recurring in nature, therefore revenue in character. Further the stamp duty paid/incurred in executing lease deed for two consecutive periods of



ten years each on same terms came for '*Richardson Hindustan Ltd. Vs CIT*' (*supra*), wherein their lordship first held that, taking of premises for a period ranging from five to twenty years did not amount to acquisition of a capital assets nor an advantage of enduring nature, therefore the legal expenditure incurred in executing a lease cannot partake the character of capital but 'revenue' for the purpose of deduction under the provisions of the Act. Insofar as the decision rendered in '*Plantation Corporation of Kerala Ltd. Vs CAIT*' is concerned, we note that, State Government of Kerala leased a piece of rubber plantation land to assessee for twenty years which was meant exclusively for rubber plantation. Therein their lordships following the catena of judicial precedents reiterated that, irrespective of period of lease any expenditure incurred on stamp duty & registration etc., in executing the lease of rubber



plantation land, still continues to be an expenditure to facilitate the business to be carried out more efficiently therefore recurring & revenue in nature. In case of '*CIT Vs Gopal Associates*' (supra) the stamp duty & registration charges were incurred/paid for securing lease of fruit processing plant which generated the circulating capital in the form of processed food.

32. Insofar as the impact of frequency of payment is concerned, we note an interesting issue of annual protection fees paid for undertaking not to grant any lease, permit or prospecting licence regarding limestone to any other party without a condition that no limestone should be used for manufacturing of cement, came for consideration in '*Assam Bengal Cement Co. Ltd. Vs CIT*' [1955, 27 ITR 34 (SC)], wherein their Hon'ble Lordship vide para 6 held that,



consideration had an advantage or benefit for such whole period of lease was an enduring benefit for the benefit of whole of business. The annual recurring payment is immaterial because one had got to look to nature of payment which in its turn was determined by the nature of the asset which assessee acquired.

33. In view of former judicial precedents, it is abundantly clear that the nature & substance of transaction determines the substance of expenditure incurred in conducting such transaction. Inversely, it shall be pertinent to note that in deciding the substance, nature and character of expenditure and its consequential deductibility under the provisions of the Act, neither the form, nor the mode and further nor the frequency (lump-sum or instalment) of such payment is a material factor but the nature and substance alone.



34. The appellant drew our attention to no such decision which could dismantle the Revenue's case and inversely hardly could support the case of the appellant in claiming the consideration paid in acquiring licence/lease to excavation iron-ore as revenue in nature & character.

35. On the contrary, with the support of judicial precedents(supra), the respondent Revenue has satisfactorily established on record that; (a) the impugned mining-lease is not a lease as defined u/s 105 of the Transfer of Property Act and also not a lease that is otherwise understood in common parlance, but is an indenture by which right to extract/win iron-ore minerals was granted to the appellant, (b) such right to extract since not a commodity or inventory to be traded but an asset of enduring benefit which in turn used to generate



circulating commodity/inventory therefore brought in existence an asset falling within the ambarella of 'capital asset' of s/s 14 of section 2 of the Act and (c) the impugned sum of ₹16CrS paid by the appellant in the form of 'stamp duty' is in nature & substance was a consideration paid for acquiring such capital right to extract/win iron-ore minerals from leased area under a mining-lease term of 20 years commencing from 2007. In view thereof, the appellant contention that renewal did bring no new capital asses in existence finds no legal leg to stand, hence rejected in very terms. In summation, all the contentions but the alternate claim for depreciation stands rejected as devoid of merits.

B. Alternate Claim for Depreciation

36. Capital asset under the provisions of the Act could be classified into twin type, depreciable and non-depreciable. Though the Act defined no term as



'depreciable asset' however, the terminology is associated to assessee's engagement with business or profession. The inherent meaning is that the capital asset is exploited by assessee in pursuit of business objectives or professional service. The normal wear and tear of such capital assets over a period of time, known as 'useful life', a depreciable asset would reach the status of being a scrap. The capital asset may further fall into two class by their very attributes in term of section 2(11) of the Act which defines the term '*block of assets*' means a fixed assets classified into (a) tangible and (b) intangible assets. The intangible assets are know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature. Perhaps as a safeguard measure Explanation 3 to section 32(1) is *pari-materia* of section 2(11) to cover both tangible and intangible assets for depreciation.



37. Section 32 of the Act on the other hand, allows a deduction for depreciation on tangible (buildings, furniture & fixture and Plant & machinery) as well as on intangible assets (know-how, patents, copyrights, licenses, franchises) owned and used for business or professional purposes.

38. In the present case, the impugned 'stamp duty' payment disallowed is already decided and attained finality as a consideration paid for acquisition of licence to extract iron-ore minerals. The consideration so paid in law represents cost of acquisition of capital asset, consequently, qualifies for depreciation u/s 32 of the Act r.w.r. 5 of Income Tax Rules, 1962[‘the rules’]. The said licence being an intangible asset therefore to fall in the later class of block of assets eligible for depreciation @ prescribed in part B of Appendix to section 32 of the Act r.w.r. 5 (supra).



39. While pushing for alternate claim the Ld. AR requested for allowing entire balance in the same year on the premise that, the Hon'ble Supreme Court by an order suspended the mining operations. In this context we note that, the deductibility of expenditure incurred towards acquisition of mining lease or sub lease thereof does not depend upon the operations, therefore claim of the appellant is meritless, thus rejected. This our view finds fortified in '*Salgaonkar Mining Industries Vs CIT*'. [1997, 228 ITR 183(Bom)]. The solitary ground thus stands partly allowed.

40. In result, the appeal of the assessee is PARTLY ALLOWED in aforesaid terms.

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

-S/d-
PAVAN KUMAR GADALE
JUDICIAL MEMBER

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

Panaji/Dt: 11th February, 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.