

]आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH: RAIPUR**

श्री रवीश सूद , न्यायिक सदस्य, एवं
श्री अरुण खोडपिया, लेखा सदस्य के समक्ष
**BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.133/RPR/2022
निर्धारण वर्ष /Assessment Year: 2017-18

Technoblast Mining Corporation
19, 2nd Floor Krishna Complex,
Chaitanya Nagar,
Raigarh – 496 001

v. PCIT (Central),
Raipur

[PAN: AAEFT 5992 Q]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri Sakshi Gopal Aggarwal &

Sidharth Parakh, CAs

प्रत्यर्थी की ओर से /Respondent by : Shri V. K. Singh, CIT-DR

सुनवाई की तारीख/Date of Hearing : 03.07.2023

घोषणा की तारीख /Date of Pronouncement : 13.09.2023

आदेश / ORDER

PER ARUN KHODPIA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of the Principal Commissioner of Income Tax (Appeals)-1, Raipur, dated 30.03.2022, and pertains to assessment year 2017-18.

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2. The assessee has raised the following grounds of appeal:

1. *"That the H'ble PCIT, Raipur erred in appreciating the facts properly.*
2. *That the Hon'ble PCIT erred in treating the assessment order passed by the learned assessing officer under section 143(3) of the Income Tax Act, 1961 as erroneous and prejudicial to the interest of revenue.*
3. *That the H'ble PCIT, erred in treating the order passed by the learned assessing officer as erroneous without pointing out any deviation of law in the assessment.*
4. *That the H'ble PCIT(Appeals) erred in treating the order of the learned assessing officer as erroneous ignoring the fact that the learned assessing officer has passed order after considering all the facts.*
5. *The appellant craves leave to add, amend, alter, vary and/or withdraw any or all the above grounds of appeal."*

3. At the inception of the hearing, the registry pointed out that the appeal of the assessee is delayed by 44 days for which the assessee has submitted an affidavit. Learned AR of the assessee submitted that since the assessee is working in several mining projects located in remote areas and there are various issues like excess of internet therefore, this note has given the knowledge of the assessee much later. The plea of the assessee was found to be satisfactory looking to the business and nature and work of the assessee. Therefore, the delay was condoned, and the matter was permitted for adjudication.

4. Brief facts of the case culled out of the material on records are that, the assessee is a firm, engaged in the business of mining contract and electronically filed its return of income declaring total income of Rs.7,62,87,530/- on 24.10.2017. Thereafter, the case was selected for scrutiny

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under CASS for the Assessment Year 2017-18. Accordingly, notice under Section 143(2) of the Act was issued on 11.08.2018 and was duly served upon the assessee. Subsequently, notice under section 142(1) along with query letter was issued on 29.10.2019 and a reminder for compliance with notice under Section 142(1) of the Act was also issued and duly served upon the assessee. In response to the above notices, the assessee has furnished its submissions through e-proceedings.

5. Assessment order u/s 143(3) of the Act was passed on 14.12.2019 by ITO-1(1), Bilaspur after making addition of Rs. 47,47,725/-, determining the total assessed income as Rs. 8,10,35,255/-.

6. The assessment records of the assessee were subsequently examined by the Learned PCIT and on perusal of the assessment records has revealed that the assessee had claimed and was allowed depreciation @30% on heavy vehicle (Hyva and Tipper) amounting to Rs.1,25,41,649/- (1,18,71,149 – 6,70,500), however, it was the Learned PCIT observed that the assessee is engaged in mining contract, these vehicles are primarily used on assessee own business and furthermore, no hire income was shown from the heavy vehicle, therefore, depreciation @15% only should have been allowed to the assessee and thus the excess allowance of depreciation amounting to

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Rs.62,70,825/- was proposed to be disallowed. In the light of above facts, a show-cause notice under Section 263 of the Act dated 22.03.2022 was issued to the assessee incorporating the above facts, to furnish its reply in support of its claim. Assessee responded towards notice under Section 263, but, the reply of the assessee was not found convincing and therefore, Learned PCIT invoking the provisions of Section 263 of the Act assuming the jurisdiction over the case of assessee have considered that the assessment order passed by Learned AO was erroneous in so far as it is prejudicial to the interest of Revenue, therefore, the assessment order was set aside and the AO was directed to reexamine the issue by passing afresh an assessment order providing the assessee proper opportunity of being heard.

7. Dissatisfied with the order of PCIT, the assessee has assailed the issue before us for adjudication of the same.

8. At the outset, Learned AR of the assessee submitted that the additional depreciation claimed by the assessee was on heavy vehicle called Hyva and Tipper. The vehicles are absolutely and exclusively used for the transportation of the coals, or iron ores from production sites to the finished goods stock yard inside the coal/iron ore mines.

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There is no other use of these vehicles mainly Tippers, dumpers except using exclusively and wholly for the production of various ores and its transaction to the specified locations/finished goods stock yards. It is further submission of the Learned AR that the assessee is charging money on per ton per kilometer / cubic meter basis for transportation purposes. Various vehicles were used in transportation of goods from one place to another and, therefore they were falling in the category of motor versus motor lorries or other motors taxies and were entitled for higher depreciation. Learned AR drew our attention to the MDO contract for production of iron ore at Aridongri iron mines with M/s. Godawari Power and Ispat Ltd., wherein at page 6 of the paper book in para 2, scope of work was defined and certain terms like Loading/Feeding to crusher plant, loading of iron ore for dispatch into trucks directly and also directs upon the points that the over burden from the Quarry/Mines shall have to be dumped suitably on surface dumps up to a distance of average 4Kms (one side) from Quarry/mines faces and same shall have to be properly stacked and levied. The iron ore has to be separately dumped into a surface stack yard or other such place as per the instruction of 'GPIL', any other work not mentioned herein above and as and when given by GPIL. Head of the mines in writing for the purpose of mining operations. It was the submission of Learned AR that the assessee was working for

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Godawari Power and Ispat Ltd. In support, Learned AR submitted the copy of the MDO contract for production of iron ore at Aridongri Iron Mines. Learned AR also submitted that shifting of material from one place to another place within the range of 4 kms was also the responsibility of the assessee fixed under the scope of work in the said MDO agreement. Learned AR drew our attention to the page 25 of the paper book showing Balance Sheet of the assessee having gross receipt of Rs.79,91,44,513/- and also shows the schedule of Fixed Assets placed in the paper book at page no.27. It was the submission of Learned AR that the machines i.e. vehicles used for transportation under the scope of work assigned to the assessee by Godawari Power and Ispat Ltd. were actually for the work of Godawari Power and Ispat Ltd and thus the said work should be considered as hiring of vehicles, in order to establish the contention of the assessee that the heavy vehicles i.e. Hyva and Tipper are covered within the meaning of motor lorries as prescribed in appendix – 1 effective from A.Y. 2006-07 for the purpose of calculation of depreciation under the Income-tax Act. A written submission was furnished by Learned AR, extracted as under:

"As per the appendix I to the income tax rules, 1962 entry no. 3(a) the following assets qualify to depreciated at higher rate of depreciation

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"(ii)(a) Motor buses, motor lorries and motor taxis used in a business of running them on hire other than those covered under entry (b)."

The word motor lorries has not been defined under either the Income tax Act, 1961 nor has been defined under the Motor Vehicle Act, 1988. These words however have been defined under various standard dictionaries.

At this point your honours we would most humbly draw your attention towards the observation made by the Gujarat High Court in case of *Gujco Carriers vs CIT 174 CTR 324 (2002)* wherein the honorable court has in para 12 observed as under :-

12. The origin of word 'lorry' is uncertain, Lorry means, (i) 'a large strong motor vehicle for transporting goods, etc.' (ii) "a long flat low wagon, or, (ii) a truck used on railways or tramways" as per the Concise Oxford Dictionary. As per Webster's II New River Side University Dictionary, the word 'lorry in the meaning relevant to the present context. would mean, 'a motor truck'. As per the Encyclopaedia Britannica, truck is "also called lorry" Thus, the expression "motor lorries" in Entry III-E(LA) of Appendix I would mean "motor trucks".

121. "Truck" is introduced in following terms in the Encyclopaedia Britannica :

"Truck also called LORRY and motor vehicle designed to carry freight or goods or to perform special services such as fire fighting six-horsepower engine.

122. **Lorry or truck would, therefore, mean not only any motor vehicle designed to carry freight or goods but also to perform special services like fire-fighting.** Fire engine....material.

Further, it was also observed

123. **It will, thus, be clear that motor vehicles like fire trucks, fork-lift trucks and crane trucks which are designed for special services fall within the category of 'motor trucks' (also called 'motor lorries').**

16. **The mobile crane of the assessee which admittedly was registered as a heavy motor vehicle, would for the above reasons, clearly fall within the expression motor lorries (which means motor trucks)** in Entry III (IA) of the Table in

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Appendix I under rule 5 of the said Rules, since it was used by the assessee in its business of running the crane on hire.

That your honour, it was further observed by the Honourable Delhi "G" Bench of ITAT in Asstt. Commissioner of Income-tax, Circle: 7 (1) Vs M/s. Sainik Mining and Allied Services Limited,

Para 7

.....From the order of the Id. CIT (Appeals) we find that the Id. CIT (Appeals) relying on various decisions has come to the conclusion that dumpers, trucks, tippers, TATA 407, TATA 709. TATA Tankers and other similar vehicles were used in transportation of goods from one place to another and, therefore, they were falling in the category of motor versus motor lorries or other motor taxies and were entitled for depreciation at the rate of 40 per cent as per entry III (3)(ii) of part A of appendix I of 1. T. Rules, 1962.

Therefore your honors in the light of the aforesaid observations of the courts, since the tippers/hyva which were used by the assessee are also registered with the RTO as Heavy Goods Vehicle (copy of the RC books have already been submitted) and also owing to the fact that they were being used for transportation of ores by the assessee would fall within the meaning of motor trucks/motor lorries and would qualify for the higher rate of depreciation."

9. Learned AR of the assessee also relied upon the order of ITAT, Rajkot Bench in the case of ACIT vs. M/s. H. D. Enterprise, Bhuj, wherein it was the observation of ITAT that the appellant engaged in in the business of heavy earth moving equipment and vehicles for excavation of over burden (earth) and minerals and transporting the same to the specified place and also transportation of minerals from mines to power plants transportation of ash from power plant to outside the plant, the appellant has also used tippers for transportation of over burden minerals and ash for Gujarat Industries Power

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Ltd., South West Mining Ltd., KSK Minerals Resource Pvt. Ltd. and VS Lignite Power Ltd. The assessee claimed higher rate of depreciation on dumper at 30%. In such facts, it was the finding of ITAT that the assessee has received from contracts which includes various operation including transportation. We observed that to claim higher depreciation, it is required that goods transported must belong to someone else and use of motor vehicles for transportation is a key to claim higher depreciation. After perusal of material on record, we find that assessee is engaged in providing equipment on motor vehicle on hire. After considering the above facts, judicial pronouncements, elaborate findings of the Learned CIT(A), we do not find any reason to interfere in the findings of the Learned CIT(A), therefore the appeal of the Revenue is dismissed.

10. With such arguments, it is the prayer of Learned AR that since the assessee has composite contract with the M/s. Godawari Power and Ispat Ltd., which includes use of heavy vehicles, transportation of goods also which should be considered as hire and therefore additional depreciation within the meaning of provisions of Section 32 of Income-tax Act according to the rate of depreciation under New Appendix1 (effective from 2006-07 onwards) under rule 5, Part-A, III, Machinery and Plant, (3)(ii)(a) the depreciation on such vehicles which fall within the category of motor lorries used in the business of running on hire for depreciation at higher rate of 30%, be allowed.

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Therefore, it was the submission that, the contention of the assessee shall be accepted and the order passed by Learned PCIT treating the order of Learned AO as erroneous and prejudicial to the interest of Revenue deserves to be quashed.

11. Contrary to the submissions of the Learned AR, Learned CIT-DR submitted that since the vehicles were used in the assessee's own business may be for some other company under any contractual obligation but still the same should not be considered as being used for hire and therefore, the contention of the assessee may not be accepted accordingly the order of Learned PCIT deserves to be sustainable wherein it was clearly established that the assessment order is erroneous and so far as it is prejudicial to the interest of revenue in view of Section 263 of the Act.

12. We have considered the rival contentions and perused the material available on record and have analyzed the judicial pronouncement relied upon by the assessee. It was the admitted fact that during the year under consideration assessee has claimed a higher depreciation on heavy vehicles used by the assessee in its mining contract which were treated as used by assessee in its own business by the Learned PCIT. Assessee's submissions that the Hyva

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and Tipper were used for transportation of goods, which were in the scope of work of the MDO contract with Godawari Power and Ispat Ltd., therefore, the assessee had accounted for the entire receipt for the contract under one head i.e. "Gross Work". Therefore, only by for not showing the hire / transportation income separately in the books of account, the assessee cannot be barred to avail the benefit of additional depreciation as available under the provisions of Income-tax Act. It was also the contention of the assessee that the issue was discussed when the assessment was framed by the Assessing Officer under section 143(3) of the Act. On perusal of the submissions of the assessee before the Learned AO during the assessment proceedings under section 143(3) of the Act, the assessee had submitted details of new assets acquired by the assessee during the relevant assessment year 2017-18, the copy of the same also furnished by the assessee in the paper book, however, on perusal of placed documents, it could not be emerged that any specific query pertaining to additional depreciation was made by the assessing officer and responded by the assessee, therefore, the contention of the assessee that issue was discussed and a view was formed by Ld AO cannot be construed and subscribed too. Under such circumstances, the Learned PCIT was will within the powers to invoke the provisions of Section 263 of the Act and to assume the jurisdiction to initiate the

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revisionary assessment proceedings. The main condition for availing of additional depreciation as carved out in the Act is that the motor buses/motor lorries and motor taxis are to be used in a business of running them on hire could not be satisfied by the assessee by way of any supporting documents like any hire charges which were separately paid to the assessee by the contractee company or any condition which may support the contention of the assessee that the heavy vehicles were used in hire by the assessee. Since, the MDO contract was a composite contract for Excavation & loading, Sorting Sizing & Stacking, Hauling, Drilling & Blasting, Loosening, Feeding to fixed screen plant etc. The hiring of vehicles in terms of Section 32 could not be specified and therefore, the Learned PCIT has rightly observed to disallow such additional depreciation when the vehicles are used in the own business of the assessee and not on hire. Regarding reliance of the assessee on the case of M/s H.D. Enterprise by coordinate bench of ITAT, Rajkot (supra), the facts in the present case are distinguishable, so far as the assessee in the case of the case of M/s H.D. Enterprise (supra) was found to be engaged in the business of providing equipment and motor vehicle on hire, whereas in present case such fact could not be established by the assessee by placing any cogent material on record.

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13. In background of such facts and circumstances, we do not find any merit in the contention of the assessee and infirmity in the order of Learned PCIT, therefore, we are of the opinion that Learned PCIT was correct in invoking the provision of Section 263, since the order of Learned AO was satisfactorily held to be erroneous so far as prejudicial to the interest of Revenue. Under such circumstances, we refrain ourselves to interfere with the order of Learned PCIT passed u/s 263 of the Act, thus the same remain sustained, consequently, grounds of appeal raised by the assessee in the instant appeal are dismissed.

14. In the result, appeal of the assessee stands dismissed, in terms of our observations herein above.

Order pronounced on the 13th day of September 2023, in Raipur.

Sd/-
(रवीश सूद)
(RAVISH SOOD)
न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-
(अरुण खोडपिया)
(ARUN KHODPIA)
लेखा सदस्य/**ACCOUNTANT MEMBER**

रायपुर/Raipur,

दिनांक/Dated: 13th September, 2023.

Priti Yadav, Sr.PS (on Tour)

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी / The Appellant

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2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त (अपील) / The CIT(A)-1, Raipur (C.G)
4. The Pr.CIT-1, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच, रायपुर /
The DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फाईल/Guard File

आदेशानुसार / By Order

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur