

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL (IT) NO. 1143 OF 2018

The Principal Commissioner of Income Tax-2 **...Appellant**
Versus
Tata Steel Ltd. **...Respondent**

Mr. Suresh Kumar for Appellant.
Mr. Nishant Thakkar a/w Ms. Jasmin Amalsadvala & Mr. Bhavesh
Bhatia i/b Lumiere Law Partners for Respondent.

CORAM: K. R. SHRIRAM &
DR. NEELA GOKHALE, JJ.
DATED: 17th April 2024

PC:-

1. This is an appeal under Section 260A of the Income Tax Act, 1961 ("the Act").
2. Assessee is engaged in the business of manufacturing of iron and steel products. Assessee had filed the return of income for Assessment Year 2006-2007 on 20th November 2006 declaring total income of Rs. 44,22,82,61,971/-. The return of income was processed under Section 143(1) of the Act and later assessment under Section 143(3) of the Act was completed on 29th December 2009 determining the income at Rs. 4489.32 crores.
3. The Commissioner of Income Tax ("CIT") exercising powers under Section 263 of the Act, issued a notice dated 11th May 2011 to Assessee and by an order dated 16th December 2011, set aside the

original assessment order on three issues with a direction to the Assessing Officer (“AO”) to pass the assessment order afresh. Only one of the three issues we are concerned with in this appeal and that relates to allowability of Assessee’s contribution to the Compensatory Afforestation Fund (“CAF”) amounting to Rs. 212.52 crores.

4. The AO passed an order dated 1st March 2013 under Section 143(3) read with Section 263 of the Act. The AO disallowed the contribution made by Assessee to CAF. Aggrieved by the order, an appeal was preferred by Assessee to the Commissioner of Income Tax (Appeals) (“CIT(A)”), who dismissed the appeal by an order dated 29th November 2013.

5. Assessee filed two appeals before the Income Tax Appellate Tribunal (“ITAT”), one impugning the order passed by the CIT on 16th December 2011 under Section 263 of the Act and the other against the order dated 29th November 2013 passed by the CIT(A).

6. By an order dated 3rd February 2017, the ITAT allowed both the appeals. On the issue of CAF, the ITAT observed that identical issue has been decided in favour of Assessee by various Benches of ITAT and also in the case of sister concerns of Assessee. Relying upon the order passed by the ITAT in *The Commissioner of Income Tax and Another v. M/s. Ramgad Minerals & Minings Pvt. Ltd.*¹, the ITAT held

1. ITA No. 5021 of 2009 dated 6th January 2012.

that the CIT was not justified in invoking the provisions of Section 263 of the Act. It is this order of the ITAT, which is impugned in this appeal and the following three substantial questions of law are proposed :

“1. Whether in the facts and circumstances of the case and in law, the Hon'ble Tribunal was justified in holding that the CIT-2 was not justified in invoking the provisions of section 263 with regard to issue of allowability of the assessee's contribution to the Compensatory Afforestation Fund (CAF) amounting to Rs. 212.52 crores.

2. Whether in the facts and circumstances of the case and in law, the Hon'ble Tribunal was right in disregarding the judgement of Hon'ble Supreme Court in the case of T. N. Godavarman dated 29.10.2002 on the whole scheme of compensatory afforestation, and such capital expenditure is capital in nature giving enduring benefits.

3. Whether in the facts and circumstances of case and in law, whether the ITAT was right in deciding afforestation expenditure as revenue expenditure wherein the expenditure was in nature of additional lease premium towards mining lease and has to be held as capital expenditure.”

7. The only issue considering the facts and circumstances of case and also the proposed substantial questions of law, which arise in this appeal is “whether Assessee was entitled to treat the contribution of Rs. 212.52 crores to CAF as capital in nature or as revenue expenditure as claimed by Assessee”.

8. This issue is no more *res-integra* as even The Bombay High

Court (Goa Bench) in the case of *The Commissioner of Income Tax v. Dr. Prafulla R. Hede and Another*² has accepted that contribution to CAF will be revenue expenditure and not capital in nature. Even the Special Leave Petition that was filed by the Revenue against *Dr. Prafulla R. Hede (supra)* has been dismissed on 21st November 2014.

9. In the circumstances, in our view, no substantial question of law arises. Appeal dismissed.

(DR. NEELA GOKHALE, J.)

(K. R. SHRIRAM, J.)

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2. Tax Appeal No. 15 of 2012 dated 6th February 2012.