Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO.29 OF 2006

THE COMISSIONER OF INCOME TAX
having Office at Aayakar Bhavan Patto, Plaza,
Panaji, Goa. **... Appellant**

~ VERSUS ~

VELINGKAR BROTHERS,
Veling, Mardol, Goa. **...Respondent**

APPEARANCES

FOR THE APPELLANT	**Mr SM Singbal,** *with N. Kunkalinkar Advocates*
FOR THE RESPONDENT	**Ms Amira Razaq,** *Junior Central Govt. Standing Counsel*

CORAM : GS Patel & Nutan D Sardessai JJ.

DATED : 19th September 2017

ORAL JUDGMENT (per G.S. Patel J)

1. We have de-tagged this Tax Appeal from Tax Appeal No.7/2004. They were earlier tagged together on account of a shared history of litigations to the Supreme Court. They are entirely independent.

2. The present tax appeal is by the Commissioner of Income Tax and it is directed against an order dated 23rd February 2006 of the Income Tax Appellate Tribunal, Panaji Bench for the Assessment Year 2000-2001. The Assessee is a Partnership Firm. It is a mining entity and has two divisions, one engaged in mining and the other in exports. The Assessee filed a return on 30th October 2000 declaring a *nil* income on claiming an exemption under Section 10B of the Income Tax Act, 1961 of Rs.1,25,48,077/-. The return was processed under Section 143(1) and an intimation issued.

3. The Assessing Officer found that the Assessee had not deducted depreciation under Section 32(1) on assets used by its mining division while computing the gross total income and thus claimed an excess exemption under section 10B. This prompted a notice on 28th August 2003 under Section 148.

4. On calling for an explanation, the Assessee said that it had the option of claiming or not claiming depreciation. The AO found that claiming depreciation was not optional and that it had to be allowed, whether claimed or not. He proceeded to do so and also separately treated interest income of Rs.3,51,292/- as income from other sources. The Assessee appealed to the Commissioner of Income (Appeals), unsuccessfully. The Assessee then appealed to the ITAT which, by its impugned order, held that claiming depreciation was optional in the hands of the Assessee.

5. This is very broadly the background of the matter. We do not think that this requires or even permits a detailed examination. The reason is that initially the appeal itself was disposed of on a concession made by the Counsel for the Revenue that on the basis of a Circular of 2008 the tax effect was below the amount provided in that Circular. A review petition failed. The Supreme Court reversed and remanded both the Review Petition and the Appeal. The Review Petition was allowed.

6. In parallel, this Court also took up Civil Application (Review) No.8 of 2011 and Tax Appeal No.16 of 2007. That tax appeal was also by the Commissioner of Income Tax against this very Respondent-Assessee, but in regard to the Assessment Year 2001-2002 (it is commonly accepted that there is a typographical error in paragraph 4 of the order of 15th March 2017 of a Division Bench of this Court). The Division Bench hearing the Review Application and the Tax Appeal noted that there is a Circular No.21 of 2015 which sets the cut off limit at Rs.20.00 lakhs. In other words, appeals including pending appeals where the tax effect is below Rs.20.00 lakhs are not filed or pursued by the Revenue. It is not in dispute that the tax effect for the Assessment year 2000-2001 is, even if accepted at a notional value, no more than Rs.8,48,453/- well below the Rs.20.00 lakhs limit. This is what the previous Bench held on 15th March 2017 and we are bound by that decision and are in respectful agreement with it. The present Tax Appeal No.29 of 2006 will, therefore, stands dismissed on that limited ground. The appeal is dismissed. There will be no order as to costs.

NUTAN D. SARDESSAI J. **G. S. PATEL J.**