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

INCOME TAX APPEAL NO. 1693 OF 2016

Pr. Commissioner of Income Tax-1 .. Appellant

v/s.

Essel Mining & Industries Ltd. .. Respondent

Mr. Suresh Kumar for the appellant
None for the respondent

CORAM : AKIL KURESHI &
M.S. SANKLECHA, J.J.

DATED : 4th FEBRUARY, 2019

P.C.

1. The Revenue has filed this appeal challenging the judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short) raising following questions for our consideration :-

"(i) Whether on the facts and circumstances of the case and in law, the Tribunal was justified in deleting the addition of Rs.1,68,94,820/- on account of 'net present Value' (NPA) without appreciating the fact that the said payment was capital in nature and hence cannot be allowed u/s 37(1) of the I.T. Act, 1961?

(ii) Whether on the facts and circumstances of the case and in law, the Tribunal was justified in deleting the disallowance of

> *deduction of Rs.1,34,08,905/- holding it to be revenue expenditure, but which was incurred for starting a new project which was later on abandoned?"*

2. Question no.(i) arises out of the Revenue's objection to the respondent assessee claiming an expenditure of Rs.1.68 crores by way of revenue expenditure. The Assessing Officer held that the expenditure is capital in nature. The CIT(A) and the Tribunal reversed the decision of the Assessing Officer. The Tribunal noted that the assessee was engaged in trading of iron ore and mining ore. During the year under consideration, the assessee had expended a sum of Rs.1.68 crores by way of payment to the various departments and obtained temporary working permission for mining purpose, which was a precondition. The Tribunal held that the payment was an essential payment required to be made for continuing its existing mining operation and non-payment of the same would have resulted in adverse consequences. Under such circumstances, we see no error in the view of the Tribunal. Thus, not entertained.

3. Question no.(ii) was considered by this Court in the case of CIT Vs. M/s. Essar Oil Ltd. in Income Tax Appeal (L) No. 921 of 2006 and by order dated 16th October, 2008, this Court had dismissed the

Revenue's appeal. Under such circumstances, we see no error in the Tribunal having followed the decision in Essar Oil Ltd. (supra) to dismiss the Revenue's appeal before it. Thus, not entertained.

4. Under the circumstances, this appeal is dismissed.

(M.S. SANKLECHA, J.) **(AKIL KURESHI, J.)**