O-25

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITA/25/2012
COMMISSIONER OF INCOME TAX,
KOLKATA - II, KOLKATA
VS
M/S RUNGTA SONS (P) LTD.

BEFORE :
THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
-A N D-
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
DATED : 1ST APRIL, 2024

Appearance :
Ms. Smita Das De, Adv.
….for appellant
Mr. Subash Agarwal, Adv.
Mr. Brijesh Kumar Singh, Adv.
Mr. Nitish Bhanddery, Adv.
….for respondent

1. Heard Ms. Smita Das De, learned standing Counsel for the appellant and Sri Subash Agarwal, learned counsel assisted by Mr. Brijesh Kumar Singh, learned counsel for the respondent/assessee.
2. This appeal has been admitted on the following substantial questions of law:-

   "(a) Whether on the facts and in the circumstances of the case the Income Tax, Appellate Tribunal erred in law in upholding the order of CIT(A) deleting the disallowance of 'Net Present Value' (NPV) of Rs.3,95,56,500/- without appreciating the fact that it relates to earlier previous years and is capital in nature and hence cannot be allowed U/s. 37(1) of the Income Tax Act, 1961?

(b) Whether the impugned order is bad, arbitrary, illegal perverse and the same is nothing but a total non-application of mind of the concerned respondent and the same is liable to be set aside and/or quashed?"

3. The assessee paid a sum of Rs. 3,95,56,500/-towards the 'Net Present Value' so as to carry on the mining operation. Hon'ble Supreme Court in T.N. Godavaram Thirumalpad –vs- Union of India in I.A. No. 826 in W.P.(C) No. 202/1995 decided on 26.09.2005 held that the 'Net Present Value' is a fee. Without payment of NPV the assessee could not carry on his mining operation. He was compelled to make payment so as to continue his mining business. The Tribunal has elaborately dealt with the issue and recorded its finding in paragraph 12 to 15 of the impugned order dated 5.8.2011 in I.T.A. No. 933/Kol/2009 relating to assessment year 2006-07. The CIT(A) allowed the appeal of the respondent/assessee and the order of the CIT(A) was affirmed by the I.T.A.T. by the impugned order.

4. Similar question as involved in the present appeal, came for consideration before this Court in the case of Principal Commissioner of Income Tax, Central Tax 1 –vs-. Rungta Mines Ltd. [2018] 96 taxmann.com 166 (Calcutta) in G.A. No. 2977 of 2015 decided on 21.06.2018. By the aforesaid order this Court dismissed the appeal

of the Income Tax Department, following some judgements of Hon'ble Supreme Court on principle of law.

5. Considering the facts and circumstances of the case, the findings of fact recorded by the I.T.A.T. in the impugned order and the judgement of the Co-ordinate Bench in the case of Rungta Mines Ltd. (supra) we do not find any merit in this appeal.
6. Consequently, the appeal is dismissed.
7. Both the substantial questions of law are answered in favour of assessee and against the revenue.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

GH/sg.