

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 5327 OF 2008
(Arising out of SLP(C)No.3192 OF 2008)

RAJASTHAN STATE MINES AND MINERALS LTD. ... APPELLANT(S)

:VERSUS:

COMMISSIONER OF INCOME TAX, JAIPUR ... RESPONDENT(S)

WITH

CIVIL APPEAL NO. 5328 OF 2008
(Arising out of SLP(C)No.4509 OF 2008)

ORDER

Leave granted.

These appeals are directed against the judgment and order dated 3.8.2007 passed by the High Court of Judicature at Rajasthan, Jaipur Bench, Jaipur in Income Tax Appeal No.270 of 2005 whereby and whereunder the appeal preferred by the appellant herein has been dismissed holding that no substantial question of law arose for its consideration.

Indisputably, the appellant is a Public Sector Undertaking of the Government of Rajasthan. In the assessment orders in question, which are for the assessment years 1998-99 and 1999-2000 respectively, the Assessing Officer noticed the status of the appellant and proceeded to assess the returns filed by it, treating

the expenditure towards development and prospecting charges amounting to Rs. 14,60,729/- and Rs. 16,14,445/-, as against the expenditure of Rs. 33,58,241/- and Rs.53,84,505/- respectively in the preceding year, as capital expenditures.

The Assessing Officer opined:

“The submissions of the assessee have been considered. However, from the past records of the assessee it is seen that this expenditure is held to be purely as capital expenditure and disallowed. Therefore, in view of the past history of the case, the expenditure towards development and prospecting charges amounting to Rs. 1460729/- is treated as of capital nature and disallowed.”

Although no provision of the Income Tax Act has been referred to by the Assessing Officer in his order, the Commissioner of Income Tax (Appeals) by its order dated 20.8.2003 opined as under:

“From the above discussion it can be noted that the development and prospecting charges are incurred for prospecting and development of the mining area, sub-section (2) of section 35E specifically provides that any expenditure incurred wholly and exclusively on any operation relating to prospecting for any mineral or on development of a mine in the year of commercial production and any one or more of the 4 years immediately preceding that year shall be allowed as deduction equal to one tenth of the amount of expenditure stating from the year of assessee is specifically covered u/s 35E(2). In fact, assessee has claimed write off over a period of time as against 10 years provided in the Act and therefore the claim of the assessee should be more. So far as the observation of the assessing officers that in past, such expenditure is disallowed, Id. AR has mentioned that in earlier years no such disallowance was made except in A.Y. 1995-96 & A.Y. 1996-97 claim of development expenses was disallowed on the ground that assessee has not been able to prove that the expenses on development falls in the category of exploring, locating or providing deposits of any mineral so as to qualify for deduction u/s 35E.”

The Income Tax Appellate Tribunal also took into consideration the application of the provisions of Section 35E(2) of the Income Tax Act, opining:

“We have heard the rival submissions and perused the materials available on record. This issue has been discussed by the Id. CIT(A) at page 5 in para 4.4 of his order for the assessment year 1998-99 wherein he observed that prospecting expenses were included on expenditure of corporate plan which does not pertain to prospecting expenses and, therefore, he upheld the disallowance. The Id. AR contended that this expenditure was incurred for orientation of the administrative set up and this was in the nature of revenue receipt whereas the Id. DR contended that this expenditure was of the capital nature because the corporate plan expenditure was of enduring benefit to the assessee company.”

The High Court, however, by reason of the impugned judgment proceeded to invoke the provisions of Section 37(1) of the Income Tax Act. It is not in dispute that had the High Court considered the claim of the appellant in the light of Section 35E(2), it might have arrived at a different conclusion. We, therefore, set aside the impugned judgment and order and remit the matter to the High Court for considering the appellant's appeal afresh on merit.

The appeals are disposed of accordingly.

.....J
(S.B. SINHA)

.....J
(CYRIAC JOSEPH)

NEW DELHI,

AUGUST 25, 2008.