

**In the Income-Tax Appellate Tribunal,  
Delhi Bench 'F', New Delhi**

**Before : Shri Bhavnesh Saini, Judicial Member And  
Shri L.P. Sahu, Accountant Member**

**ITA No. 2464/Del/2015  
Assessment Year: 2008-09**

Minda Industries Ltd., B-64/1, Wazirpur Industrial Area, New Delhi (PAN – AAACM1152C) <b>(Appellant)</b>	<b>vs.</b>	DCIT, Central Circle 3 New Delhi  <b>(Respondent)</b>
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<b>Appellant by</b>	Shri R.K. Kapoor, C.A.
<b>Respondent by</b>	Ms. Parmita Tripathi, CIT/DR Shri Atiq Ahmed, Sr. DR

<b>Date of Hearing</b>	16.07.2018
<b>Date of Pronouncement</b>	18.07.2018

**ORDER**

**Per L.P. Sahu, A.M.:**

This appeal has been filed by the assessee against the order of the Id. CIT(A)-25, New Delhi dated 26.02.2015 for the assessment year 2008-09 on the following grounds :

- 1) That the learned CIT(A) has grossly erred in law and on facts and circumstances of the assessee's case in holding that disallowance u/s 14A is required to be made even if no dividend has been received by the assessee during the year under consideration.*
- 2) That the learned CIT(A) has grossly erred in law in ignoring the binding precedent of the jurisdictional High Court in the case of Holcim India Pvt. Ltd. as noted by him in his order.*
- 3) That the learned CIT(A) has grossly erred in law in not appreciating that section 14A read with Rule 8D is not to be applied in a mechanical way.*

- 4) *The disallowance u/s 14A red with Rule 8D is bad in law and prayed to be deleted.*
- 5) *That the learned CIT(A) has grossly erred in law and on facts and circumstances of the assessee's case in holding that the sales tax subsidy of Rs.59,37,318/- received by the assessee is on revenue account.*
- 6) *That the order passed by the Assessing Officer and upheld by the CIT(A) holding that subsidy received is on revenue account is bad in law.*
- 7) *That the CIT(A) has grossly erred in law in concurring with his predecessor without applying his mind independently on the issue.*
- 8) *That the learned CIT(A) ought to have appreciated that accounting treatment given to the subsidy remain the same since beginning and the treatment given by the assessee to the sales tax subsidy received was the only legal permissible treatment.*
- 9) *That without prejudice the CIT(A) ought to have held that the sales tax subsidy received by the assessee was on capital account not to liable to tax at all."*

2. The brief facts of the case are that the assessee filed original return of income declaring income of Rs.14,50,14,400/- on 29.09.2008. The assessment was completed u/s. 143(3) of the IT Act on 25.11.2010 at an income of Rs.15,74,98,021/-, thereby making addition of Rs.1,24,83,621/- under various heads. The assessee challenged the original assessment order in appeal before the Id. CIT(A), who vide order dated 29.08.2011 sustained the additions of Rs.69,37,318/- on account of sales Tax subsidy and Rs.30,34,861/- on account of disallowance u/s. 14A of the IT Act. The assessee challenged this order of Id. CIT(A) before the Tribunal, who in appeal No. 5251/Del/2011 deleted both the addition.

3. However, as speaks the assessment order, the Assessing Officer observed that a search and seizure operation was carried on 10.01.2012 on

the basis of which the Assessing Officer has made assessment order u/s. 153A on 30.03.2014 by making exactly the same additions as made in the original assessment order. In this order, the Assessing Officer also gave appeal effect of the order of Id. CIT(A) passed in appeal against the original assessment order, and reduced the additions by Rs.34,88,662/- deleted by the Id. CIT(A), and accordingly made assessment at the total income of Rs.15,40,09,360/-. The assessee again carried the matter before the Id. CIT(A), who sustained the additions of Rs.59,37,318/- on account of Sales Tax subsidy and Rs.30,34,861/- on account of disallowance made u/s. 14A of the IT Act. Aggrieved by the impugned order, the assessee is again in appeal before the Tribunal.

4. The Id. AR of the assessee submitted a small written synopsis, which reads as under :

*This is an appeal filed by the assessee against the Order of Ld. CIT(A) who has upheld the disallowance made by the Assessing Officer.*

*This is the second round of appeal before the Hon'ble ITAT, pursuant to search u/s 132 conducted on the assessee on 10.01.2012 as noted by the Assessing Officer in the Assessment Order in Para 2. This Order of assessment has been passed by the Assessing Officer u/s 153Ar.w.s. 143(3) of the Income Tax Act, 1961.*

*As would be noted from the Assessment Order, the Assessing Officer has made the additions which are contested in this appeal only on the ground that these additions were made in the original Assessment Order u/s 143(3) on 25.11.2010 and these additions were confirmed by the Ld. CIT(A) and assessee's appeal in Hon'ble ITAT on these additions are pending.*

*At the stage of CIT(A), the Ld. CIT(A) also merely followed the Order of his predecessor i.e. CIT(A)-9 and upheld these additions as would be noted from **Page 8 of** CIT(A)'s Order on both the additions.*

*The issues came up before Hon'ble ITAT against the original Assessment Orders and Orders of CIT(A) and Hon'ble ITAT has deleted both the additions as would be noted from the copy of Hon'ble ITAT in ITA No. 5251/D/2011 for A. Y. 2008-09.*

*It is further submitted that Assessing Officer has merely reiterated the earlier additions made and no incriminating material pertaining to these additions was found during the search on the assessee. Therefore, the issues involved in the present appeal are already settled as under:-*

**GROUND NO. 1 TO 4 RAISED BY THE ASSESSEE ARE ON DISALLOWANCE U/S 14A:**

*This issue has been discussed by the Hon'ble for both the years i.e. A. Y. 2007-08 and 2008-09 at **Page 14** of the Hon'ble ITAT Order and it has been held by the Hon'ble ITAT in **Para 22 Page 16** of the said Order that since assessee has not earned any dividend during the A. Y. 2007-08 and 2008-09, no disallowance can be made. The legal aspect pertaining to this issue is now well settled and the Order of the Hon'ble ITAT in assessee's own case on same issue on same year may be followed, it is respectfully submitted.*

**GROUND NO. 5 TO 9 SALES TAX SUBSIDY WHETHER CAPITAL RECEIPT OR REVENUE RECEIPT:**

*This issue has also been adjudicated upon earlier in A. Y. 2008-09 by the Hon'ble ITAT and the discussions starts from **Page 8 Para 9** ending with the final conclusion of the Hon'ble ITAT at **Page 14**, wherein it has been held that the said subsidy is a capital receipt and the treatment given by the assessee to reduce it from the capital assets and grant depreciation accordingly is a correct treatment.*

*It may be clarified that some of these issues post search also came up before the Hon'ble ITAT for A. Y. 2009-10, 2010-11, 2011-12, 2012-13 and has been decided by the Hon'ble ITAT post search assessments and the Orders earlier passed by the Hon'ble ITAT under similar circumstances have been followed and the appeal of the assessee has been allowed as per the copy of Order being filed.*

*It is, therefore prayed that the appeal of the assessee on both the issues may be allowed.*

5. On the other hand, the ld. DR relied on the orders of the authorities below.

6. After hearing the submissions of both the parties and perusing the material on record, we find that no addition has been made by the AO on the basis of search and seizure operation referred to above. However, the additions, whatsoever, made in the original assessment order have been again repeated. A perusal of the assessment order shows that the AO though has given appeal effect of the order of the ld. CIT(A), but since both the impugned additions have already been deleted by the Tribunal in appeal emanated out of original assessment order, there remains no justification to sustain both the impugned additions at this stage, if the appeal effect of the order of Tribunal, noted above, is given by the Assessing Officer. We, therefore, are not inclined to support the impugned order. Accordingly, the appeal of the assessee deserves to be allowed.

7. In the result, the appeal is allowed.

Order pronounced in the open court on 18<sup>th</sup> July, 2018.

**Sd/-**  
**(Bhavnes Saini)**  
**Judicial member**

**Sd/-**  
**(L.P. Sahu)**  
**Accountant Member**

Dated: 18<sup>th</sup> July, 2018

*\*aks\**

*Copy of order forwarded to:*

(1) <i>The appellant</i>	(2) <i>The respondent</i>
(3) <i>Commissioner</i>	(4) <i>CIT(A)</i>
(5) <i>Departmental Representative</i>	(6) <i>Guard File</i>

*By order*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Delhi Benches, New Delhi*