

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI BENCH 'F',
NEW DELHI

BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI K. N. CHARY, JUDICIAL MEMBER

ITA No. 3440/DEL/2016
[Assessment Year: 2007-08]

The A.C.I.T.
Central Circle - 2
New Delhi

Vs.

M/s Mideast Integrated Steels Ltd
H-1, Zamrudpur Community Centre
Kailash Colony, New Delhi

PAN No. AAACM 0846 P

(APPELLANT)

(RESPONDENT)

Appellant by : Smt. Ashima Neb, Sr. DR

Respondent by : Shri Shailesh Gupta, CA

Date of hearing: 11/04/2019

Date of Pronouncement: 12/04/2019

ORDER

PER N. K. BILLAIYA, ACCOUNTANT MEMBER:

This appeal by the Revenue is preferred against the order of the
ld. CIT(A) - 34, New Delhi dated 15.03.2016 pertaining to A.Y 2007-08.

2. The solitary grievance of the Revenue is that the Id. CIT(A) erred in law in allowing expenses amounting to Rs. 9,81,39,180/- out of total disallowance amounting to Rs. 10,64,56,411/- made by the Assessing Officer on account of disallowance of Mining Expenses.

3. The assessee is engaged in the business of manufacturing of pig iron. During the course of scrutiny assessment proceedings, the assessee was asked to produce the books of account for verification. On verifying the books of account on test check basis, the Assessing Officer noticed that in the profit and loss account, the assessee has debited an amount of Rs. 53.22 crores under the head 'Mining Expenses'. The assessee was asked to produce the bills and vouchers in support of this expenditure. However, on receiving no plausible reply, the Assessing Officer disallowed 20% of the entire expenses on adhoc basis and made addition of Rs. 10,64,56,441/-.

4. The assessee agitated the matter before the Id. CIT(A) and submitted the details of mining expense alongwith certain additional evidences. Admitting the additional evidence, the Id. CIT(A) forwarded the same to the Assessing Officer for his comments giving him an opportunity of being heard.

5. The Assessing Officer submitted a remand report dated 18.04.2012 and the comments were general in nature. The Id. CIT(A) further gave one more opportunity to the Assessing Officer and asked the Assessing Officer to specifically verify the unvouched expenses under the head mining expenses. The Assessing Officer, vide his report dated 28.08.2015, submitted as under:

"Kindly refer to your letter No. F.No.CIT(Appeal)-112012-13/130 dated 18/19.082015 on the subject mentioned above.

2. As per earlier directions, in this regard letters dated 11.10.2012, 18.08.2014 and 18.03.2015 were issued to the assessee by my predecessors. Further hearings were conducted on 26.08.14, 04.09.2014 and 11.09.2014 (as per record) to seek the desired details. The queries raised on the said dates and the replies of the assessee in this regard are reproduced as under:-

2.1 Vide letter dated 11.10.2012 the assessee was asked to produce:

Complete details as to expenses booked under the head Mining Expenses which comprises of-

- (a) Opening stock at Rs. 168.67 Millions,*
- (b) Mining Expenses 532.28 Millions*

- (c) *Commission to M/s. Stempcor at Rs.26.33 Mi lions and*
 (d) *Closing stock at Rs. 265,47 Millions*

1. *To furnish the account of all the parties to whom amount paid under the head mining expenses during the F Y. 2006-07, in the following format*

<i>Name of the Party along the complete address</i>	<i>Balance as On 1st April</i>	<i>Balance as on 31st March</i>	<i>Transaction during the year</i>	<i>Payment</i>

You are requested to submit the above details/evidence on or before 22.10.2012.

2.1.1. In response to this, assessee has filed reply dated 22.10.2012 in which stated as under:

Para 2. In reply thereto and the instruction of the assessee, it is submitted that submissions dated 28.02.2012, 12.03.2012 and 05.04.2012 had already been filled alongwith copy of invoices on sample basis of all expenses claimed in the return of income by the assessee with AC IT, Central Circle- VIL

Para 5. Thus it is prays that your good self may dispense with again producing books of account along with original voucher because records are in bulk and have to be carried in container. Moreover, records are more than five years old and have to be again stored out.

Para 6. However, copy of all submission along with all paper books relating to copy of invoices on sample basis of all expenses claimed are again enclosed herewith for your reference.

2.2. Another letter was issued dated 18.08.2014. The queries raised vide the said letter are reproduced as under:-

As per direction of the Ld CIT(A), New Delhi: you are required to provide complete details of expenses under the head 'Mining Expenses' alongwith voucher for verification.

The next date of hearing is fixed for 26.08.2014 at 11.00 AM. As asked to produce the following voucher of mining expenses:

SNo	Name of the Item	Date of Voucher/bill	Amount
1	Crushing Rom	13.05.2006	2,15,250
2	'Crushing Rom	06.06.2006	19,20,264
3	Crushing Rom	12.09.2006	7,45,487
4	Crushing Rom	14.11.2006	16,04,337
5	Crushing Rom	23.01.2007	18,40,860
6	Transportation CLO	30.05.006	10,27,695
7	Transportation CLO	17.08.2006	10,36,361
8	Transportation CLO	17.08.2006	10,16,929
9	Transportation CLO	09.10.2006	7,66,406
10	Transportation CLO	28.10.2006	7,34,787
11	Transportation CLO	27.11.2006	3,86,116
12	Transportation CLO	21.12.2006	6,11,570

13	Transportation CLO	02.01.2007	8,14,088
14	Transportation CLO	19.03.2007	3,08,840
15	Transportation CLO	27.03.2007	2,68,304
16	Printing & Stationary		5,553
17	Printing & Stationary	30.06.2006	20,121

18	Printing & Stationary		2,488
19	Repair & Maintenance	28.10.2006	48,315

However, the assessee had expressed inability to produce voucher 3 to Rs 83,17,261/- as mentioned below. The assessee has also stated vide letter dated 11.09,2014 that since the record has become very old therefore, the vouchers have either deteriorated or destroyed and the could only produce some of the voucher called for(on sample basis) and requested that the requirement of producing these voucher may be dispensed with.

3. Based on the above, it's summarized that the following vouchers of mining expenses(as sought for on test check basis) were not produced as evidence:

S. No	Name of the Item	Date of Voucher/bill	Amount
1	Crushing Rom	13.05.2006	2,15,250
2	Crushing Rom	14.11.2006	16,04,337
3	Crushing Rom	23.01.2007	18,40,860
4	Transportation CLO	30.05.006	10,27,695
5	Transportation CLO	17.08.2006	10,16,929
6	Transportation CLO	09.10.2006	7,66,406
7	Transportation CLO	27.11.2006	3,86,116
8	Transportation CLO	02.01.2007	8,14,088
9	Transportation CLO	19.03.2007	3,08,840
10	Transportation CLO	27.03.2007	2,68,304
11	Printing & Stationary	30.06.2006	20,121
12	Repair & Maintenance	28.10.2006	48,315
		Total	83,17,261

Even vide letter dated 18.03.2015, the assessee was asked to file details of

2. In this connection, you are requested to furnish the following details/evidence before the undersigned on or before 23.03.2015.

(a) Complete details as to the expenses booked under the head 'Mining Expenses:

(b) To furnish the account of all the parties to whom amount paid under the head 'Mining Expenses' during the financial year 2006-07 alongwith copy of bill in respect of each party':

However, the same remained unexplained till date.

5. As it is very much evident that the assessee is not able to provide all the bills asked for test check basis, this clearly proves that the assessee is not able to substantiate his claim for mining expenses.

6. Accordingly, requested that the issue may be decided by your goodself based on the facts and circumstances of the case and the aforementioned discussion. "

6. After considering the facts of the case in the light of the remand report furnished by the Assessing Officer, the ld. CIT(A) confirmed the addition to the extent of Rs. 8,31,726/- and deleted the balance of Rs. 9,81,39,180/-.

7. Before us, the ld. DR strongly submitted that though the unvouched expenses were Rs. 83,17,261/- but the Assessing Officer was not in a position to examine the vouchers of all the expenses claimed under the head mining expenses. It is the say of the ld. DR that the Assessing Officer has not conceded on balance of expenditure which has been deleted by the ld. CIT(A).

8. Per contra, the ld. counsel for the assessee strongly supported the findings of the ld. CIT(A).

9. We have heard the rival submissions and have given thoughtful consideration to the orders of the authorities below. We have also gone through the remand report of the Assessing Officer exhibited elsewhere. We find that the first appellate authority gave two opportunities to the Assessing Officer with a specific direction to specify the unvouched expenses under the head mining expenses. On

the basis of such specific direction, the Assessing Officer examined the accounts and reported that the expenses to the tune of Rs. 83,17,261/- were not supported by bills and vouchers. On the basis of such report, the ld. CIT(A) confirmed the addition to the extent of Rs. 83,17,261/-. We do not find any error or infirmity in the findings of the ld. CIT(A).

10. In the result, the appeal of the revenue in ITA No. 3440/DEL/2016 is dismissed.

Order pronounced in the open court on 12.04.2019.

Sd/-

**(K.N. CHARY)
JUDICIAL MEMBER**

Sd/-

**(N. K. BILLAIYA)
ACCOUNTANT MEMBER**

Dated: 12th April, 2019

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR, ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	