

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA. No.2207/DEL/2017
Assessment Years 2012-13

M/s. MMTC Limited, Core-1, SCOPE Complex, Lodhi Road, 7, Institutional Area, New Delhi-110003	v.	Addl. CIT, Spl. Range-6, C.R. Building, New Delhi-110003
TAN/PAN: AAACM1433E		
(Assessee)		(Revenue)

ITA. No.3576/DEL/2017
Assessment Years 2012-13

Addl. CIT, Spl. Range-6, C.R. Building, New Delhi-110003	v.	M/s. MMTC Limited, Core-1, SCOPE Complex, Lodhi Road, 7, Institutional Area, New Delhi-110003
		TAN/PAN: AAACM1433E
(Revenue)		(Assessee)

Assessee by:	Ms. Deepashree Rao, CA Shri Vibhu Gupta, CA Shri Rohit Jain, Advocate		
Revenue by:	Ms. Rakhi Vimal, Sr. DR		
Date of hearing:	09	01	2020
Date of pronouncement:	20	03	2020

ORDER

PER AMIT SHUKLA, J.M.:

The aforesaid cross appeal has been filed by the assessee as well as by the Revenue against impugned order dated

28.03.2017 passed by Ld. CIT (Appeals)-6, Delhi for the quantum assessment passed u/s. 143(3) r.w.s 92CA(3) of the Act for the Assessment Year 2012-13.

2. In assessee's appeal, the assessee has challenged the disallowance of Rs.15,96,083/- towards travelling expenses; whereas, the Revenue has challenged the deletion of disallowance of Rs.13,44,93,968/- made u/s. 14A of the Act read with rule 8D.

3. In so far as, the assessee's appeal is concerned, the facts in brief are that, the assessee is a public limited company and Government of India Public Sector Enterprises under Ministry of Commerce. It is involved in trading and import and export of various bulk commodities, such as metals/minerals, non-ferrous metals, fertilizers, agro products, general trade and hydrocarbons, etc. It is also into import of gold and silver under OGL and also into manufacturing of gold and silver items. During the course of assessment proceedings, the AO noted that the assessee debited sum of Rs.1,59,60,835/- on account of travelling expenses. The assessee was required to furnish the bifurcation and details of these expenses incurred by the directors, which as per the AO, the assessee has failed to furnish the same and accordingly, he held that in order to prevent the leakage of revenue, 10% of the said expenses are to be disallowed.

4. The assessee before the CIT(A) rebutted the finding of the Assessing Officer and submitted that during the course of

assessment proceeding the AO had asked only to furnish the details of foreign visit expenses which were dully submitted vide letter dated 22.12.2015, which includes expenses incurred by the employees as well as directors. The relevant query and the reply have also been reproduced in impugned appellate order at pages 12 and 13. It was further submitted by the assessee that the Assessee Company is a Government of India Undertaking and business of the assessee being into international trade, import and export, therefore, foreign travelling is part and parcel of the assessee's business. No such disallowance was ever made in the earlier year. All the requisite information was again filed before the CIT (A).

5. However, the Ld. CIT (A) has confirmed the addition on the ground that the details do not clarify the period for which the presence of an official was required for company related work and the period the official stayed on tour after completion of official work.

6. Before us Ld. Counsel for the assessee submitted that entire details were furnished before the AO as well as before the Ld. CIT (A) regarding foreign travel of the directors and employees and detailed chart was furnished before the Assessing Officer, the copy of which is appearing in the paper book at pages 52 to 54. In the said chart, the assessee has given the details of employees, like names and designations of employees, country visited, period of visit, TA, DA paid and further details of expenditure of air fare, miscellaneous

expenses, etc. After furnishing of such voluminous details, such kind of ad-hoc disallowance cannot be made. Further, it was stated that out of Rs.1,59,60,835/-, sum of Rs.51,75,511/- was domestic travelling expenses and balance for foreign travelling. The reasoning given by the Ld. CIT (A) for confirming the addition is purely vague and cannot be sustained.

7. On the other hand, the Ld. DR, submitted that, first of all, as per the AO, no proper details were given; and secondly, the Ld. CIT (A) has specifically stated that the details do not clarify the period for which the presence of the official was required for company related work. In the absence of such details, ad-hoc disallowance is justified.

8. We have heard the rival submissions and perused the relevant material available on record. As stated above, the assessee company is a Public Sector Undertaking under Ministry of Commerce which is mainly a trading organisation involved in the import and export of various bulk commodities including export and import of gold and silver items. Since, the trade of the assessee is basically formed of international trade; therefore, its officials were required to travel abroad for the purpose of business. Being a public sector undertaking, the foreign visits by the directors and its employees cannot be held to be for non-business purpose, specifically, when the company is under the administrative control of Ministry of Commerce, Govt. of India. On a perusal of the details filed before the AO, it is seen that the assessee has given details of

foreign visit expenses, which includes name and designations, country visited, TA-DA claimed, miscellaneous expenses, air fare, etc. These foreign travels have been for the trading purpose, conferences, training etc. Once the assessee has given very specific details of each and every employee, then without pointing out any specific discrepancy, no disallowance can be made. Apart from that, the reasoning given by the Ld. CIT (A), whether the presence of officials was required or not and how much that official has over stayed after completion of the official work is only based on presumption and surmise which cannot be upheld when the employees and directors were going official purpose. Being a PSU and under aegis of GOI, there cannot be an element of personal use of the company and therefore, such ad-hoc disallowance cannot be made and same is directed to be deleted.

9. In the Revenue's appeal, the only issue involved is disallowance u/s. 14A r.w.r 8D. The facts in brief are that the assessee company has shown an investment of Rs.4606.33 million. The Ld. AO noted that the assessee has not done any calculation of disallowance u/s 14A. In response to show cause notice, the assessee submitted that the assessee company has not earned any exempt income during the year and no deduction of expenses of whatsoever nature has been claimed by the assessee in its return of income filed during the year. Therefore, no disallowance could be made. However, the Ld. AO has mechanically invoked Rule-8D for making the

disallowance of Rs.13,44,93,986/-.

10. The Ld. CIT(A) relying upon the earlier order of AY 2011-12 passed by the CIT(A) has decided this issue in favour of the assessee.

11. Both the parties agreed that there is no exempt income earned by the assessee. The Ld. Counsel submitted that whence there is no exempt income, then there is no question of disallowance of u/s. 14A. Now, it is a well settled proposition under the jurisdiction of Hon'ble jurisdictional Delhi High Court in view of **CIT vs Cheminvest Ltd. (2015) 378 ITR 33 (Del.) and CIT vs Holcim India Pvt, Ltd. in ITA No.486/2014**, that when assessee has not earned any exempt income then no disallowance u/s 14A can be triggered. Therefore, the disallowance u/s 14A made by the AO sans any exempt income is deleted.

12. In the result, appeal filed by the Revenue is dismissed.

13. Finally, the appeal of the assessee is allowed and the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 20th March, 2020.

Sd/-
[O. P. KANT]
ACCOUNTANT MEMBER

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

DATED: 20.03.2020

Shekhar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

Assistant Registrar