

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER  
AND  
SHRI K.N. CHARY, JUDICIAL MEMBER  
[Through Video Conferencing]**

ITA No.1820/Del/2017  
Assessment Year: 2011-12

DCIT, Circle-16(2), New Delhi	<b>Vs.</b>	M/s. Metso Minerals (India) Pvt. Ltd., C-227, Ground Floor, Western Marg, Near Garden of five Senses, Paryavaran Complex, New Delhi
<b>PAN :AAACS3407L</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Sh. Vipul Kashyap, Sr.DR
Respondent by	Ms. Prem Lata Bansal, Sr. Adv. Sh. Vinay Sahni, CA, Ms. Rachna Sahni, Adv. Sh. Shivang Bansal, Adv

Date of hearing	10.08.2021
Date of pronouncement	25.08.2021

**ORDER**

**PER O.P. KANT, AM:**

This appeal by the Revenue is directed against order dated 18/01/2017 passed by the Learned Commissioner of Income-tax (Appeals)-6, Delhi [in short 'the Ld. CIT(A)'] for assessment year 2011-12 raising following grounds:

1. *Whether in facts and on circumstances of the case, the Ld. CIT(A) is legally justified in deleting disallowance of Rs. 3,77,74.156/- u/s 37 (1) of the Income Tax Act (the Act) on account of expenditure claimed in profit & loss account even when the assessee had not discharged its initial onus u/s 37(1) of the Act that expenditure was laid out or expended wholly and exclusively for the purpose of the business of the assessee?*
2. *Whether in facts and on circumstances of the case, the Ld. CIT(A) is legally justified in not upholding the disallowance of Rs. 32,78,941/- u/s 14 A of the Act by ignoring legislative intend of section 14 A of the Act that disallowance u/s 14 A of the Act is not dependent upon earning of exempt income as explained vide CBDT Circular No. 5/2014 dated 10.02.2014?*
3. *Whether in facts and on circumstances of the case, the Ld. CIT(A) is legally justified in deleting the disallowance of Rs. 32,78,941/- u/s 14 A of the Act without considering legal principles that allowability or disallowability of expenditure under the Act is not conditional upon the earning of the income as upheld by Hon'ble Supreme court in case of CIT Vs Rajendra Prasad Moody (1978) 115 ITR 519?*
4. *Whether in facts and on circumstances of the case, the Ld. CIT(A) is legally justified in deleting disallowance of interest expenditure of Rs. 54,339/- relatable to interest free advances u/s 36(1)(iii) of the Act even when the assessee was making huge payment of interest on loan and the assessee had not proved test of commercial expediency with regard to interest free advance?*
5. *Whether in facts and on circumstances of the case, the Ld. CIT(A) is legally justified in deleting disallowance of interest expenditure of Rs. 54,339/- relatable to interest free advances u/s 36(1)(iii) of the Act by ignoring a fact that had the assessee not advanced interest free loan to related parties and others, it could have repaid a part of bank loan reducing interest burden on the assessee?*
6. *Whether in facts and on circumstances of the case, Ld. CIT (A) is legally justified in allowing relief to the assessee on the basis of earlier orders in the assessee's own case despite the fact that principle of res-judicata is not applicable to Income Tax proceedings as each assessment year is a separate proceedings year?*
7. *That the appellant craves leave to add, amend, alter or forgo any ground/(s) of appeal either before or at the time of hearing of the appeal.*

**2.** Briefly stated facts of the case are that the assessee was engaged in the business of equipment supply and engineering services. For the year under consideration, the assessee filed

return of income on 29/09/2011, declaring total income of ₹ 16,97,32,094/-. The return of income filed by the assessee was selected for scrutiny assessment. In the assessment completed under section 143(3) of the Income-tax Act, 1961 (In short 'the Act') on 16/03/2015, the Assessing Officer made certain additions/disallowance and assessed total income at ₹ 21,13,65,650/-. On further appeal, the Ld. CIT(A) deleted certain additions/disallowance. Aggrieved with deletions of additions/disallowance, the Revenue is in appeal before the Tribunal, raising the grounds as reproduced above.

**3.** The parties appeared before us through Video Conferencing facility and filed paper-book and other documents through email.

**4.** The ground No.1 of the appeal relates to disallowance of ₹ 3,77,74,156/- under section 37 (1) of the Act, which has been deleted by the Ld. CIT(A) .

**4.1** The learned DR relied on the order of the lower authorities, whereas the Learned Counsel of the assessee submitted that identical issue of disallowance in assessment year 2010-11 has been deleted by the Ld. CIT(A) and action of the Ld. CIT(A) has been upheld by the Tribunal in ITA No. 6681/Del/2014.

**4.2** We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The Assessing Officer has disallowed 10% of the expenses on ad-hoc basis claimed under the head 'telephone expenses', 'travelling expenses' and 'staff welfare expenses' on the ground that element of personal use cannot be overruled as no logbook was maintained for Vehicles, details of phone calls was not maintained in respect of telephones and proper vouchers of tour

and travel expenses were not maintained. The assessee made a detailed submission before the Ld. CIT(A) in respect of the expenses claimed. The Ld. CIT(A) following his predecessor, deleted the disallowance made by the Assessing Officer. The Tribunal (supra) in assessment year 2010-11 has observed as under:

*“12. Having gone through the aforesaid findings and order of the Assessing Officer, we find that the Ld. CIT(A) has done good reasoned order which does not require any interference. The ld. CIT(A) has discussed the entire issues in detail after considering the detailed submissions made before him and relying on various case laws. No contrary material is brought on record on behalf of the Revenue to discard the conclusions arrived at in the impugned order. Therefore, finding no infirmity in the impugned order, the appeal of the Revenue is found devoid of merits and deserves to fail.”*

**4.3** In our opinion, the Assessing Officer is not justified in making ad-hoc disallowance out of expenses without pointing out specific error or absence of particular voucher of expenses. Further, the Tribunal in identical circumstances has upheld the deletion of such disallowance. Respectfully, following the finding of the Tribunal in the case of the assessee in immediately preceding assessment year, we uphold the finding of the Learned CIT(A). The ground No. 1 of the appeal of the Revenue is accordingly dismissed.

**5.** The ground No. 2 & 3 of the appeal of the Revenue are related to disallowance of ₹ 32,78,941/- under section 14A of the Act.

**5.1** The Assessing Officer observed investment of ₹ 7,22,91,759/- made in the subsidiary and in view of the no disallowance made by the assessee under section 14A of the Act, the Assessing Officer made disallowance of ₹ 32,78,941/- for

interest cost and other cost including manpower cost. The Ld. CIT(A) deleted the disallowance in view finding of his predecessor and no exempt income earned by the assessee. The relevant finding of the Learned CIT(A) is reproduced as under:

*“3.4.3 In the preceding assessment year 2010-11, my learned predecessor has deleted this addition holding as under:*

*"I have considered the assessment order framed by the Assessing Officer and the submissions made by the appellant. It is an admitted fact that the assessee had made investment of Rs.7,22,91,759/- in a subsidiary company long back and this investment had been duly reflected in the Balance Sheet. It is also an admitted fact that in the FY 2002-03 relevant to AY 2003-04, appellant had provided a sum of Rs.7,22,91,758/- in its Profit & Loss A/c on account of diminution in value of investment. However, the said provision had been offered for taxation in the computation of income and the same had been accepted by the Assessing Officer while framing assessment u/s 143(3) for the said AY 2003-04. Thereafter, appellant is regularly showing a sum of Rs.l/- as investment in its Balance Sheet since AY 2003-04 and in none of the years, provisions of section 14A have been invoked by the Assessing Officer.*

*In my opinion, provisions of section 14A are not at all attracted as the same are applicable when the assessee had claimed deduction of expenditure which had been incurred in relation to exempted income, against the taxable income. In the present case, assessee had not claimed any income as exempt. Expenditure incurred and claimed by the assessee is wholly and exclusively for the purposes of business, income of which has been shown as profit of the business and has offered for taxation. Therefore, expenditure incurred for earning such income has to be allowed as deduction. Diminution in value of investment is a capital loss, it has no effect on the Profit & Loss A/c of the assessee and therefore, no expenditure can be disallowed invoking the provisions of section 14A of the Income Tax Act. Hence, disallowance of Rs.26,12,024/- made by the Assessing Officer is hereby deleted."*

*On perusal of the facts of the facts and the audited financial statements, it is seen that the appellant has not earned any exempt income during the year. The controversy in this case is that the appellant had not earned or received any dividend in the year under consideration and, therefore, no disallowance can be made by invoking the provisions of Section 14A of the Act. The similar*

*controversy has been addressed by the Hon'ble High Court of Delhi in the case of M/s Cheminvest Limited vs CIT-378 ITR 0033 wherein the court has analysed the meaning of exempt income as enumerated in Sec 14A of the Act. The Hon'ble Court held as under:*

*"the question framed by holding that the expression "does not form part of the total income" in Section 14A of the envisages that there should be an actual receipt of income, which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. In other words, Section 14A will not apply if no exempt income is received or receivable during the relevant previous year."*

*Respectfully following the decision of the Jurisdictional High Court I am of the view that the claim of the appellant needs to be upheld. The disallowance u/s Sec 14A is accordingly deleted."*

**5.2** We find that the Ld. CIT(A) has deleted the disallowance relying on the decision of the Hon'ble Delhi High Court in the case of Cheminvest Ltd (supra). We do not find any error or illegality in the finding of the ld. CIT(A). Accordingly, the grounds No. 2 & 3 of the appeal of the Revenue are dismissed.

**6.** The grounds No. 4, 5 & 6 of the appeal relate to disallowance of interest expenditure of ₹ 54,339/- related to interest free advances under section 36(1)(iii) of the Act.

**6.1** We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The Assessing Officer observed that building was put to use in the year under consideration and interest on money borrowed corresponding to the period for which the building was not put to use was computed to ₹ 54,339/- . He disallowed the said interest on the ground that same should have been capitalized by the assessee. The Ld. CIT(A) following the finding of his predecessor in assessment year 2010-11, deleted the addition observing as under:

*“3.5.3 In the preceding AY 2010-11, my learned predecessor has deleted the addition observing as under:*

*"I have considered the assessment order as well as the details furnished by the appellant alongwith the submissions. The details filed by the appellant reveals that the assessee has already capitalized interest of Rs.2,48,87,306/- out of total interest paid during the year at Rs.11,98,81,762/-. Assessee had also brought forward interest of Rs.83,57,260/- in its pre-operative expenses account pending allocation. Thus total interest of Rs.3,32,44,566/- (Rs.2,48,87,306 + Rs.83,57,260) has been transferred by the assessee to preoperative expenses and total preoperative expenses of Rs.14,79,23,076/- has been allocated to fixed assets. Accordingly amount of Rs. 7,44,64,117/- has been allocated to building account out of preoperative expenses of Rs.14,79,23,076/-.*

*Assessing Officer has ignored the facts produced by the appellant and has disallowed interest of Rs. 1,38,24,367/- out of total interest, invoking provisions of section 36(1)(3) of the Act, which amounts to double disallowance. Once when the assessee has transferred interest to preoperative expenses and again when the Assessing Officer has made disallowance which is not sustainable in law.*

*It is true that as per the proviso to section 36(l)(iii) of the Act, any amount of interest paid, in respect of capital borrowed for acquisition of an asset for extension of existing business or profession (whether capitalized in the books of accounts or not) for any period beginning from the date on which the capital was borrowed till the date on which such assets was first put to use, shall not be allowed as deduction. Assessee had borrowed the amount basically for investment in its new constructed factory at Alwar which had been put to use during the year. The expenses which were directly allocable to the asset had been directly allocated to that particular asset and the expenses which were not directly allocable, were gathered in pre-operative expenses and allocated to the assets when they were first put to use. For this purposes, assessee has adopted guidelines issued by ICAIAS-10 & AS-6. No fault is found by the Assessing Officer in the accounting policy adopted by the appellant.*

*In view of above discussion, disallowance of Rs.1,38,24,367/- is hereby deleted".*

*Since there is no change in circumstances, respectfully following the decision of my learned predecessor, the disallowance of Rs. 54,339/- made by the AO u/s 36(l)(iii) is hereby deleted. Therefore, this ground of appeal is allowed.”*

**6.2** The Tribunal in ITA No. 6681/Del/2014 for assessment year 2010-11 has upheld the deletion of ₹ 1,38,24,367/- under section 36(1)(iii) of the Act, in view of the fact that assessee has already transferred the interest to preoperative expenses which has been allocated to fixed assets. The facts in the year under consideration are identical to assessment year 2010-11, thus, respectfully following the finding of the Tribunal (supra), we uphold the deletion of the addition by the Ld. CIT(A). The ground No. 4 to 6 of the appeal are accordingly dismissed.

**7.** The ground No. 7 being general in nature, it is dismissed as infructuous.

**8.** In the result, the appeal of the Revenue is dismissed.

***Order pronounced in the open court on 25th August, 2021.***

***Sd/-***  
**(K.N. CHARY)**  
**JUDICIAL MEMBER**

***Sd/-***  
**(O.P. KANT)**  
**ACCOUNTANT MEMBER**

Dated: 25<sup>th</sup> August, 2021.

RK/-(DTDC)

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi