

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "H" MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER AND  
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**ITA No.579/MUM/2020  
(Assessment Year: 2014-15)**

Dy. Commissioner of Income  
Tax-15(1)(2),  
Mumbai.

M/s. India Tube Mills &  
Vs. Metals Pvt. Ltd.,  
Mumbai.

**PAN No.AAAC13048R**

**Appellant**

**Respondent**

Revenue by : Shri Surinder Mehra, CA  
Assessee by : Shri R A Dhyani, (D.R.)

Date of Hearing : 16.06.2022.  
Date of pronouncement : 06.07.2022.

**O R D E R**

**PER AMARJIT SINGH, A.M. :**

This appeal filed by the Revenue against the order of Commissioner of Income Tax (Appeals)-24, Mumbai Dt.25.10.2019 for the Assessment Year 2014-15.

2. The Revenue has raised the following grounds of appeal :

1. " Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of liquidated damages claimed of Rs.3,18,74,824/- in the absence of satisfactory documentary evidence"

2. “ Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in reducing the disallowance on investment to ½% of Rs.1.29.000/- amounting to Rs.645/-.”
3. “Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in disallowing addition of Rs.7,86,742/- on account of Bank Changes and Commission in the absence of documentary evidence.”
4. “Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in holding the advance of Rs.16,53,850/- pertaining to purchase of raw materials and normal advances to subcontractors are not of capital nature in the absence of documentary evidence.”
5. “Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting addition of Rs.10,00,000/- made on account of disallowance of miscellaneous expenses in the absence of documentary evidence..”

3. The facts of the case are that for the Asst. Year 2013-14 the assessee has filed Return of Income declaring loss at Rs.6,53,93,248 on 24.09.2014. The case was selected for scrutiny assessment and Notice u/s.143(2) was issued on 28.08.2015. Further relevant facts are discussed by adjudicating the grounds of appeal filed by the Revenue.

4. **Ground No.1 is regarding deleting the disallowance of liquidated damages of Rs.3,18,74,824.**

During the course of assessment, the A.O. noticed that the assessee has claimed expenditure of Rs.3,18,74,824 on account of liquidated damages. During the course of assessment proceedings, the assessee explained that it has executed contract with Bongaigaon Refinery & Petrochemicals Ltd. – Assam site. The total value of the contract with the said party was

Rs.53,36,27,070 and they had deducted 10% liquidated damages at Rs.5,33,62,707. Out of the same, Rs.1,62,19,259 was accounted for earlier year and the balance amount of Rs.3,71,43,451 had been written off during the year under consideration. The A.O. has not agreed with the submission of the assessee and disallowed the claim of liquidated damages.

5. Aggrieved by the order of A.O., the assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) has allowed the appeal of the assessee.

6. During the course of appellate proceedings before us, the assessee had furnished the Paper Book comprising copies of documents and detailed submission made before the A.O. during the course of assessment proceedings. The assessee also placed on record the supporting evidences of deducting liquidated damages to the amount of Rs.3,18,74,824 as against Rs.1,26,54,900 in the preceding year deducted by the contractee. The learned counsel also submitted that in the case of the assessee itself for A.Y. 2011-12, ITAT, Mumbai Bench vide ITA No.7675/Mum/2013 Dt.11.07.2014, has adjudicated an identical issue in favour of the assessee.

The relevant paras of the decision of ITAT is reproduced as under :

“20. We have carefully perused the findings of the Ld. CIT(A). We find that the Ld. CIT(A) has given categorical findings. After considering the purchase order given by M/s. BPCL with regard to Kochi Refinery Work and the certificate issued by Engineers India Ltd., we do not find any reason to interfere with the findings of the Ld. CIT(A). Ground No. 1 with its sub-grounds are dismissed.

21. In so far as addition of Rs. 2,81,77,068/- is concerned, the Ld. CIT(A) has considered this issue qua ground No. 3 at para-4 of his order. We find that at para- 4.3, the Ld. CIT(A) has considered the

purchase order with regard to M/s. Bharat Oman Refineries Ltd for Bina Refinery Project. We find that the Ld. CIT(A) has considered the completion certificate given by Engineers India Ltd., and as per the terms of the bidding document, the Ld. CIT(A) observed that the liquidated damages worked out to 4.47% only and hence the findings of the AO that the damages have been claimed in excess of 5% is incorrect. On these appreciation of facts, the Ld. CIT(A) has deleted the addition.

22. The Ld. DR simply relied upon the findings of the AO. We find that the Ld. CIT(A) has deleted the addition after considering the facts in the light of the completion certificate given by Engineers India Ltd. We also find that the allegation of the AO that liquidated damages are in excess of 5% is found to be erroneous by the Ld. CIT(A). Considering all these facts in totality, no interference is called for. Ground No. 2 with its sub-grounds are dismissed.”

Following the decision of the ITAT, Mumbai (supra), we do not find any infirmity in the decision of the learned CIT(A), therefore, this appeal of the Revenue stand dismissed.

7. **Ground No.2 is regarding reducing disallowance of investment to 0.5% of Rs.1,29,000 amounting to Rs.645.**

8. During the course of assessment, the A.O. noticed that the assessee had shown exempted income of Rs.6,450 and computed disallowance u/s.14A of the I.T. Act in accordance with Rule 8D to the amount of Rs.4,908. Aggrieved by the order of A.O., the assessee filed an appeal before the ld. CIT(A). The ld. CIT(A) has restricted the disallowance to the extent of 0.5% of investment of Rs.1,29,000 to the amount of Rs.645.

9. Heard both the parties and perused the material on record. The A.O. has not brought any material on record to demonstrate that the assessee had incurred any interest expenses on the investment of Rs.1,29,000 made in the earlier year out of reserves and surplus of the assessee company.

Therefore decision of Id. CIT(A) in restricting the disallowance to the extent of administrative expenditure of Rs.645 is justified. Therefore this ground of appeal of Revenue stand dismissed.

10. **Ground No.3 is regarding addition of Rs.7,86,742 in respect of bank charges and commission.**

Without giving any specific reasons, the A.O. disallowed the claim of bank charges and commission expenses of Rs.7,86,742. The Id. CIT(A) has deleted the addition after taking into consideration the copies of the bank charges account filed by the assessee. Since the bank charges and commission expenses were related to the business of the assessee company and the A.O. failed to prove contrary therefore we do not find any reason to interfere in the decision of Id. CIT(A). Therefore this ground of appeal of Revenue stands dismissed.

11. **Ground No.4 Disallowance u/s.36(1)(iii).**

During the course of assessment, the A.O. noticed that the assessee company had given advance of Rs.16,53,850 for purchases of capital goods and expenses. However no disallowance u/s.36(1)(iii) of the Act was made for capitalisation of interest related to the capital advance made by the assessee. Therefore the A.O. has made disallowance of Rs.1,45,059 as interest expenses u/s.36(1)(iii) of the Act. Aggrieved the assessee, filed an

appeal before the Id. CIT(A). The Id. CIT(A) had allowed the appeal of the assessee.

12. Heard both the parties and perused the material on record. Without reiterating the facts as mentioned above, the A.O. has not brought any material on record to establish that such advances were made for purchasing capital goods as against the claim of the assessee that same were made to purchase raw material. The Revenue has also not brought any material to contradict the finding of the Id. CIT(A) that the aforesaid advances were made for purchase of raw material of the cost of Rs.1 Crore from Mukund Limited. Therefore we do not find any force in the argument of Revenue. This ground of appeal of Revenue stand dismissed.

13. **Ground No.5 regarding deletion of Rs.10,00,000 by Id. CIT(A) on account of miscellaneous expenses.**

During the course of assessment, the A.O. made adhoc disallowance of Rs.10 lakhs out of various expenses of Rs.86,53,329. The Id. CIT(A) has allowed the appeal of the assessee.

12. Heard both the parties and perused the material on record. The Id. CIT(A) held that the assessee had filed grouping and account relating to miscellaneous expenses before the A.O. and the A.O. has not brought out any item of miscellaneous expenses which is disallowable. We observe that

the assessee has given the grouping of expenses incurred for the purpose of business under the head 'Maintenance' of Rs.19,45,332; under the head 'truck maintenance, forwarding and transport' of Rs.53,45,031; under the head 'travelling & conveyance expenses' of Rs.13,62,475. However, the A.O. has not brought any material on record to disprove that such expenses were not incurred for the purpose of business of the assessee, therefore, we do not find any infirmity in the decision of the Id. CIT(A). This ground of appeal of Revenue is dismissed.

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

**Order pronounced in the open Court on 06th July, 2022.**

**Sd/-**

**(KAVITHA RAJAGOPAL)**  
JUDICIAL MEMBER

Mumbai;

Dated: 06.07.2022.

\* Reddy gp

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

**Sd/-**

**(AMARJIT SINGH)**  
ACCOUNTANT MEMBER

BY ORDER,

(Dy./Assistant Registrar)  
**ITAT, Mumbai**