

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

**BEFORE,
SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.4470/Del/2013
(ASSESSMENT YEAR 2008-09)**

**ITA No.4471/Del/2013
(ASSESSMENT YEAR 2009-10)**

M/s Met Trade (India) Ltd. 138-139, Near Bharat Petrol Pump, Main Road, Ghazipur, Delhi-110 096. PAN-AAACM 8484F (Appellant)	Vs.	Dy. CIT Circle-6(1), New Delhi (Respondent)
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Appellant by	Mr. Abhishek Mathur, CA
Respondent by	Mr. Jitender Chand, Senior Departmental Representative ("SR- DR" for short)

ORDER

PER ANADEE NATH MISSHRA, AM:

(A) These appeals by Assessee are filed against the separate orders of Learned Commissioner of Income Tax (Appeals)-IX, New Delhi [Ld. CIT(A)", for short], dated 14.06.2013 and 24.08.2012 for Assessment Years 2008-09 and 2009-10. Grounds taken in these appeals are as under:

ITA No.4470/Del/2013 for A.Y.2008-09

“(1) That the Hon’ble Commissioner of Income Tax (Appeals) has erred in law as much as on the facts of the case in sustaining the disallowance of Rs. 1,06,07,464/- u/sec. 14A of the Income Tax Act, 1961 read with rule 8D of the Income Tax Rules, 1962.

(2) That the Hon’ble Commissioner of Income Tax (Appeals) while sustaining the aforesaid disallowance has erred in law in not appreciating that it is a imperative on the part of the learned Assessing Officer that before invoking the provisions of Rule 8D read with section 14A of the Income Tax Act, 1961, he has to record his dissatisfaction in regard to the correctness of the claim of the appellant, having regard to the accounts of the appellant. Before invoking the said provisions, the learned Assessing Officer must record her dissatisfaction on records about the correctness of the claim of the appellant in respect of such expenditure. This was not examined and legally adjudicated by the Hon’ble Commissioner of Income Tax (Appeals) as per law in a legal perspective. Compliance of the legal requirement for invoking the provisions of section 14A read with Rule 8D of the said Rules was neither been observed by the learned Assessing Officer nor been appreciated by the Hon’ble Commissioner of Income Tax (Appeals) and he under conjecture and surmises had sustained the disallowance to the extent of Rs. 1,06,07,464/- by the Hon ble Commissioner of Income Tax (Appeals) which is not only bad in law and unsustainable in law.

(3) That the Hon’ble Commissioner of Income Tax (Appeals) while sustaining the disallowance of Rs. 1,06,07,464/- has further erred in law in arbitrarily rejecting the Fund Flow Statement submitted before her which was fully supported by the Audited Statement of Accounts of the appellant company for the year under appeal wherefrom it is very much evident that the appellant company had interest free surplus fund at their disposal to invest it in the equity / share capital of the subsidiary company of the appellant in view of the expansion program of the company. The Hon’ble Commissioner of Income Tax (Appeals) had also not appreciated that no interest on such investment has been claimed by the company as expenditure in the profit & loss account of the appellant company for the year under appeal. He did not point out any mistake in such Fund Flow Statement and merely on suspicious and suspicious rejected the same and had erroneously upheld the findings of the learned

Assessing Officer for the disallowance of expenditure of Rs.1,06,07,464/- which otherwise not been incurred by the appellant company. This findings of the Hon'ble Commissioner of Income Tax (Appeals) are not only erroneous in law but also not sustainable in law.

(4) That the Hon'ble Commissioner of Income Tax (Appeals) has further erred in law as much as on the facts of the case in confirming / sustaining the disallowance of depreciation made by the learned Assessing Officer Rs.2,80,05,497/- on the Pollution Control Equipments and other Plants and Machineries purchased by the appellant during the year under appeal.

(5) That the Hon'ble Commissioner of Income Tax (Appeals) has erred in law as much as on the facts of the case in confirming the disallowance made by the learned Assessing Officer in respect of amount of bad debts of Rs.2,34,432/-.

It is, therefore, kindly prayed that the unwarranted disallowance made by the learned Assessing Officer and erroneously sustained by the Hon'ble Commissioner of Income Tax (Appeals) may kindly be deleted after providing an opportunity of being heard to the appellant.”

ITA No.4471/Del/2013 for A.Y.2009-10

“(1) That the Hon'ble Commissioner of Income Tax (Appeals) has erred in law as much as on the facts of the case in sustaining the disallowance of Rs. 1,32,78,916/- u/sec. 14A of the Income Tax Act, 1961 merely relying upon the findings of the learned Assessing Officer.

(2) That the Hon'ble Commissioner of Income Tax (Appeals) while sustaining the aforesaid disallowance has erred in law in not appreciating that it is a imperative on the part of the learned Assessing Officer that before invoking the provisions of Rule 8D read with section 14A of the Income Tax Act, 1961, he has to record his dissatisfaction in regard to the correctness of the claim of the appellant, having regard to the accounts of the appellant. Before invoking the said provisions, the learned Assessing Officer must record her dissatisfaction on records about the correctness of the claim of the appellant in respect of such expenditure. This was not examined and legally adjudicated by the Hon'ble Commissioner of Income Tax (Appeals) as per law in a legal perspective. Compliance of the legal

requirement for invoking the provisions of section 14A read with Rule 8D of the said Rules was neither been observed by the learned Assessing Officer nor been appreciated by the Hon'ble Commissioner of Income Tax (Appeals) and he under conjecture and surmises had sustained the disallowance to the extent of Rs.1,06,07,464/- by the Hon'ble Commissioner of Income Tax (Appeals) which is not only bad in law and unsustainable in law.

(3) That the Hon'ble Commissioner of Income Tax (Appeals) without giving judicious finding on the above had erroneously himself straightway embarked upon in recording his own satisfaction which otherwise mandatorily required to be recorded by the learned Assessing Officer. He without examining the accounts of the appellant company and without examining documentary evidences filed by the appellant before the learned Assessing Officer had erroneously held that the disallowance of Rs. 1,32,78,916/- u/sec. 14A made by the learned Assessing Officer is not upheld on the basis reason discussed. The reasons so recorded by him are totally based on conjecture and surmises are not only bad in law but also not sustainable in law.

(4) That the Hon'ble Commissioner of Income Tax (Appeals) before sustaining the aforesaid disallowance had neither issued clause cause notice for his intention to disallow Rs. 1,32,78,916/- u/sec. 14A of the Act. Nor provide any adequate and sufficient opportunity to the appellant for representing this case which is against the principle of natural justice. Thus, the disallowance u/sec. 14A of the Act of Rs.1,32,78,916/- is totally invalid in law.

(5) That the Hon'ble Commissioner of Income Tax (Appeals) has erroneously set aside the issue on the allowability of depreciation of Rs.2,96,78,088/- on the plants & Machineries purchased during the year ended on 31.03.2008.

(6) That the Hon'ble Commissioner of Income Tax (Appeals) has erred in law as much as on the facts of the case in sustaining the disallowance made by the learned Assessing Officer of Rs. 14,90,604/- u/sec. 80IB of the Income Tax Act, 1961. In sustaining the said disallowance, he has failed to appreciate that the similar allowance u/sec. 80IB on the similar facts had already been allowed to the appellant in the assessments of the earlier years, therefore, the principle of consistency has to followed by the

learned Assessing Officer as well as Hon'ble Commissioner of Income Tax (Appeals). This, on the facts of the case, were not maintained and he has erroneously sustained the disallowance of Rs.14,90,604/- u/sec. 80IB of the Act.

It is, therefore, kindly prayed that the unwarranted disallowance made by the learned Assessing Officer and erroneously sustained by the Hon'ble Commissioner of Income Tax (Appeals) may kindly be deleted after providing an opportunity of being heard."

(B) In the course of appellate proceedings in Income Tax Appellate Tribunal ("ITAT" for short) vide letter dated 06/02/2023 filed from the assessee's side, it has been submitted that these two appeals need to be dismissed. It has been highlighted in the aforesaid letter that National Company Law Tribunal, Principal Bench, New Delhi ("NCLT" for short), vide order dated 25/09/2020, has admitted the application filed by State Bank of India (as lead bank), for initiation of Corporate Insolvency Resolution Process ("CIRP" for short) in the case of the assessee, a Corporate Debtor. It has also been mentioned in this letter that an Interim Resolution Professional ("IRP" for short) has also been pointed by NCLT. In this letter, it has further been intimated that order dated 25th September, 2020 has already been passed u/s 14 of Insolvency and Bankruptcy Code, 2016. In the aforesaid letter dated 06/02/2023 it has, moreover, been submitted that the present appeals filed by the

assessee need to be dismissed. However, request has been made in the letter to give liberty to the IRP to file the appeals, if the Committee of Creditors decides so.

(C) At the time of hearing before us, Ld. Authorized Representative ("AR" for short) for the assessee drew our attention to the aforesaid letter dated 06/02/2023. He submitted that these appeals need to be dismissed; and submitted further that, however liberty should be given to the IRP to approach Income Tax Appellate Tribunal ("ITAT" for short) for restoration of these appeals, in accordance with law, if the Committee of Creditors decides so. The Ld. SR. DR for Revenue was in agreement with the aforesaid submissions of the Ld. AR for the assessee.

(D) In view of the foregoing; as representatives of both sides are in agreement with these, and in the specific facts and circumstances of these present appeals before us, we hereby dismiss both these appeals. However, the assessee, through IRP, or otherwise will be at liberty to approach ITAT, for restoration of these appeals, in accordance with law, and if ITAT is so approached in future, the matter will be decided in accordance with law in the light of facts and circumstances.

(D.1) For statistical purposes, both appeals are treated as dismissed.

(E) This order was already pronounced on 06/02/2023 in Open Court, in the presence of representatives of both sides, after conclusion of the hearing and is signed today on 06/02/2023.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 06/02/2003

Pk

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI