

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND
SH. CHANDRA MOHAN GARG, JUDICIAL MEMBER**

ITA No.2563/Del/2018
(Assessment Year : 2010-11)

Steel Authority of India Ltd., Taxation Dept., 4 th Floor, Ispat Bhavan, Lodhi Road, New Delhi PAN No. AAACS 7062 F (APPELLANT)	Vs.	ACIT Range – 9 New Delhi (RESPONDENT)
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Assessee by	Shri M. P. Rastogi, Adv.
Revenue by	Shri Amaresh Singh, CIT-D.R.

Date of hearing:	12.05.2023
Date of Pronouncement:	13.06.2023

PER ANIL CHATURVEDI, AM :

This appeal filed by the assessee is directed against the order dated 10.03.2015 passed by the Pr. Commissioner of Income Tax (OSD) (Appeals) – 8, (hereinafter referred to as PCIT) New Delhi for Assessment Year 2010-11.

2. Brief facts of the case as culled out from the material on record are as under :-

3. Assessee is a company stated to be engaged in the business of manufacturing and sale of steel and steel products etc. Assessee

electronically filed its original return of income for A.Y. 2010-11 on 13.10.2010 declaring income of Rs.9,58,330.01 lakhs. Subsequently, assessee revised the return of income on 31.03.2012 by revising the income to Rs.9,57,228.23 lakhs. The case of the assessee was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 11.03.2013 and the total income was determined at Rs.9,84,952.18 lakhs.

4. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 10.03.2015 in Appeal No.374/14-15 granted partial relief to the assessee. CIT(A) in the order *inter alia* also gave certain directions to AO. Consequent to the order of CIT(A), AO passed order on 07.05.2015 u/s 250 r.w.s 143(3) of the Act wherein he revised the total income of the assessee at Rs.9,60,862.88 lakhs. Against the order passed u/s 250 r.w.s 143(3) of the Act dated 07.05.2015, the assessee carried the matter before CIT(A) who vide order dated 20.01.2017 in Appeal No.166, 167/2015-16 substantially allowed the appeal of the assessee and also gave certain directions to AO. Consequent to the order of CIT(A), AO passed order u/s 250 order dated 23.03.2017 wherein the total income was computed at Rs.9,60,862.88 lakhs. Against the aforesaid order dated 23.03.2017 passed by AO, assessee once again carried the matter before CIT(A) who vide order dated 17.01.2018 in Appeal No.138/17-18 disposed off the appeal. Aggrieved by the order of CIT(A), assessee is now before the Tribunal and has raised the following grounds:

1. *“The CIT(A) has erred in not adjudicating on grounds raised on the AO not deciding the issue of Disallowance u/s14A in accordance to the directions of the learned CIT (Appeals) and the decisions of various High Courts on the matter and granting*

credit for pre-paid taxes as claimed in the Revised Return even which are appearing in the 26AS Statement on the website of the Department, by stating that these issues in the third round of appeal -despite the learned AO not giving due regard to the directions of his higher authorities.

2. *The CIT (A) has erred in not adjudicating the ground regarding the learned AO not granting relief as per the directions of the learned CIT [A] regarding the disallowance of expenses u/s 14A after taking into account the submissions & workings made in accordance to the decisions of jurisdictional & other High Courts in this regard and passing a speaking order.*
3. *The CIT [A] has erred in not adjudicating the ground regarding the learned AO not granting the correct credit for TDS and pre-paid taxes even as per 26 AS statement of the Computer site of the Department as per the directions of the learned CIT [A].*
4. *That the above grounds are independent and without prejudice to each other.*
5. *That the appellant seeks leave to add, amend, alter, abandon or substitute any of the above grounds at the time of hearing of appeal.”*

5. Before us, at the outset, Learned AR submitted that this is the second round of appeal before the Tribunal arising from the order of CIT(A) dated 17.01.2018 in Appeal No.138/17-18. He submitted that the Department and the assessee had come in appeal before the Tribunal, but the ground raised in the present appeal was not before the Hon'ble Tribunal in the first round as CIT(A) had given the directions to AO for re-adjudicating the same.

6. With respect to the Grounds raised in the present appeal, Learned AR submitted that this is the third round of litigation in respect of; (i) disallowance u/s 14A of the Act (ii) credit for TDS as claimed in the revised return as per 26AS statement.

7. With respect to Section 14A of the Act, Ld AR submitted that CIT(A) in the order dated 10.03.2015 in Appeal No. 374/14-15 at Page 30 of the order has noted that the assessee had made disallowance of Rs.330.38 lakhs u/s 14A as per Rule 8D in the computation although the interpretation of Rule 8D & Section 14A of the Act was challenged before the Courts. The assessee made detailed submissions before CIT(A) which are noted at page 30-35 of the order. CIT(A) after considering the submissions of the assessee, decided the issue by observing as under:

“I have considered this issue and the arguments of the Ld. ARs of the appellant, Ld. AO made disallowance u/s 14A read with rule 8D without discussing the issue in his assessment order. This issue has already been travelled before the Hon'ble ITAT for AY 2007-08. After considering the facts of the case, Hon'ble ITAT has given certain directions and directed the Ld. AO to follow the Jurisdictional High Court's decision in the case of M/s Maxopp Investments Ltd. vs. CIT (ITA No.687/2009 dt.18-11-2011). Ld. CIT(A)-XII has also followed the decision of Hon'ble ITAT and given direction to the Ld. AO for the AYrs.2008-09 and 2009-10 to follow the case of M/s Maxopp Investments Ltd. (supra). Respectfully following the above said orders, Ld. AO is directed to consider the case of Jurisdictional High Court and re-calculate the disallowance u/s 14A and pass a speaking order. This ground is treated as partly allowed.”

8. Before us, Learned AR submitted that CIT(A) in the order dated 10.03.2015 directed the AO to re-calculate the disallowance u/s 14A after considering the decisions of jurisdictional High Court and pass a speaking order on the issue. Learned AR submitted that thereafter AO passed appeal giving effect order dated 07.05.2012, the copy of which is placed at page 95 of the paper book. From the aforesaid order he pointed out that the AO did not deal with the directions of CIT(A) though the submissions were filed before AO during the appeal effect proceedings. He submitted that since AO did not adjudicate on the

issue, assessee once again carried the matter before CIT(A) who vide order dated 20.01.2017 in Appeal No.166, 167/2015-16 at para 3.1, of the order and at para 3.1 noted that AO has not followed the directions given by CIT(A) and once again directed the AO to follow the directions of CIT(A) and re-calculate the disallowance u/s 14A of the Act (the copy of the order is placed at page 97-107 of the paper book). Learned AR thereafter submitted that AO passed second appeal giving effect to the order dated 23.03.2017 (a copy of which is placed at page 106-107 of the paper book). From that order, he pointed that on the issue of disallowance u/s 14A that AO has noted that since no disallowance u/s 14A was made by AO during the scrutiny assessment and therefore, the question of re-calculating the disallowance u/s 14A does not arise. Ld AR states since AO did not follow the directions of CIT(A), the assessee again carried the matter in the third round of litigation before CIT(A). CIT(A) in the Appeal No.138/17-18 order dated 17.01.2018 (the copy of the order which is placed at page 108 to 112) dismissed the issue by observing that this is being the third round of appeal, the assessee cannot be allowed to re-agitate the issue again in third round. He pointed to the relevant finding on para 5.2 at page 109 of the paper book.

9. The Learned AR submits that the basis of working of disallowance u/s 14A has been accepted by AO in A.Y. 2007-08, 2008-09 & 2009-10 & the AO was given directions by CIT(A) in the order dated 10.03.2015 in first round of litigation as well as CIT(A) in the order dated 20.01.2017 in the second round to follow the directions contained therein and rework the disallowance. He submits that if the AO does not grant relief as per direction of appellate

authorities then assessee has right to appeal any number of times till the income is correctly assessed or tax is correctly determined. He therefore submitted that the AO be directed to work out the disallowance u/s 14A promptly as per the directions of CIT(A) in the first and second round of orders. He thereafter submitted that the assessee had made the disallowance u/s 14A as per Rule 8D at Rs.330.38 lakhs. He submitted that thereafter Bombay High Court in the case of **Godrej & Boyce Mfg. Co. Ltd. vs. DCIT Range 10(2)** reported in **328 ITR 81 (Bom)** and Hon'ble Delhi High Court in the case of **Maxoop Investments Ltd. vs. CIT 347 ITR 272 (Del)** has decided the issue u/s 14A r.w. Rule 8D. Assessee thereafter had reworked the disallowance in the light of the aforesaid judgement and had worked out the disallowance of Rs. 6.07 lakhs. He submitted that the aforesaid revised working of disallowance at Rs. 6.07 lakhs is on similar basis that was followed in A.Y. 2008-09 & 2009-10 and which has also been upheld by the authorities. He therefore submitted that the working of the disallowance given by assessee be accepted and relief of Rs.324.31 lakhs (Rs 330.38 lakhs – Rs 6.07 lakhs) may be granted to the assessee. Without prejudice, he further submitted that it is a settled law that before embarking upon working the disallowance u/s 14A(2), AO has to give a finding that he has not satisfying with the correctness of the claim of the assessee in respect of such expenses. He therefore submitted that appropriate directions be issued to the authorities.

10. Learned DR on the other hand supported the order of AO.

11. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the disallowance u/s 14A r.w. Rule 8D. It is the contention of the assessee that assessee had *inter alia suo moto* worked out the disallowance u/s 14A r.w.r 8D at Rs.330.38 lakhs. Thereafter, in view of the decisions of Hon'ble Delhi High Court and Bombay High Court, assessee had reworked the disallowance at Rs.6.07 lakhs, which was also in line with the disallowance made by assessee in A.Y. 2008-09 & 2009-10. The aforesaid factual submission of the assessee has not been controverted by the Revenue before us. We further find that in the first round of appellate proceedings, CIT(A) had directed the AO to work out the disallowance as per the directions contained in the order dated 10.03.2015 which was not complied by the AO. We further find that again in the second round of order, CIT(A) again directed the AO to work out the disallowance u/s 14A as per the directions contained therein but the same was also not complied with by the AO. It is the settled law that directions issued by a superior appellate authorities are binding on the Assessing Officers and Assessing Officer is required to strictly follow the directions of the appellate authorities and decide the issue as per the directions of the appellate authorities. It is not open to AO to ignore the directions of the appellate authorities unless the directions of the appellate authorities are overruled/ stayed by higher judicial forum. In the present case, we find that the directions given by CIT(A) has not been followed by AO. We therefore direct the AO to rework the disallowance u/s 14A r.w.r 8D as per the directions of CIT(A) in the first round of appeal and in accordance with law. Needless to state that AO shall grant sufficient opportunity of hearing to the assessee and assessee is also directed

promptly furnish all the required details called for by the AO. **Thus the ground of assessee is allowed.**

12. As far as the issue of not granting of Credit of TDS is concerned, it is the contention of Learned AR that the AO did not grant credit to the TDS claimed in the revised return as per 26AS statement and further there is no discussions in the order passed. When the matter was carried before CIT(A) in the first round, the CIT(A) vide order dated 10.03.2015 gave directions to AO to grant the credit for prepaid taxes as per 26AS statement and rework the tax and interests due u/s 243B and 234C of the Act. It is submitted by ld AR that despite the directions of CIT(A), in appeal effect order passed by AO on 07.05.2015, the issue was not dealt with by AO. The matter was carried before CIT(A) in the second round and in the order passed by CIT(A) on 20.07.2017 in second round the AO was once again directed to give full credit of TDS as per law. Thereafter, AO passed the appeal giving effect order on 23.03.2017 wherein AO did not make any discussions regarding the grant of TDS as per 26AS. Aggrieved by the appeal giving effect of AO, assessee once again carried the matter before CIT(A) in third round and CIT(A) vide order dated 17.01.2018 noted that it being a third round of appeal the assessee cannot be allow to re-agitate the issues again in the third round. He therefore dismissed the ground of assessee.

13. Aggrieved by the order of CIT(A), Assessee is now before us.

14. Before us, Learned AR submitted that in the first round before CIT(A), the AO was given a very clear directions to grant credit of

prepaid taxes and TDS. It is the contention of the Ld. AR that the directions of CIT(A) has not been followed by the AO till date. Ld. AR therefore submits that the AO be directed to grant the credit of the prepaid taxes and TDS.

15. Ld. DR on the other hand did not controvert the factual submissions made by Ld. AR but however supported the order of lower authorities.

16. We have heard the rival submissions and perused the material on record. It is the grievance of the assessee that despite the directions of CIT(A) to AO to grant the credit for TDS and prepaid taxes, the AO has not granted the same. It is the settled law that directions issued by a superior appellate authorities are binding on the Assessing Officers and Assessing Officer is required to strictly follow the directions of the appellate authorities and decide the issue as per the directions of the appellate authorities. It is not open to AO to ignore the directions of the appellate authorities unless the directions of the appellate authorities are overruled/ stayed by higher judicial forum. In the peculiar facts of the present case, we are of the view that whatever credit of taxes and TDS which has been deducted on behalf of the assessee and the credit for which the assessee is entitled, the assessee should be given the credit of those taxes and the assessee should not be made to enter into prolonged litigation on the issue more so, when the claim of the credits is not found to be bogus. In view of the aforesaid facts, we do not appreciate the conduct of the authorities for not granting the legitimate credit of the tax paid on behalf of the assessee and assessee should not be made to fight for

getting the credit of the prepaid taxes and TDS which is rightfully due to it. We herein once again direct the AO to promptly grant the credit of the prepaid taxes including TDS which is allowable to assessee in accordance with law at the earliest. The AO may call for necessary documents from the assessee and assessee shall promptly file the required details. **Thus the ground of assessee is allowed.**

17. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 13.06.2023

Sd/-

**(CHANDRA MOHAN GARG)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:-13.06.2023

*Priti Yadav**

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI