

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI**

BEFORE

**SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

ITA No.2051/Del/2021
Asstt. Year: 2017-18

DCIT, Central Circle-2, Delhi	Vs.	Mindeast Integrated Steels Ltd. H-1, Zamrudpur Community Centre, Kailash Colony, New Delhi – 110 048 PAN AAACM0846P
(Appellant)		(Respondent)

ITA No. 1568/Del/2021
Asstt. Year 2017-18

Mindeast Integrated Steels Ltd. H-1, Zamrudpur Community Centre, Kailash Colony, New Delhi – 110 048 PAN AAACM0846P	<u>Vs.</u>	ACIT, CC-2, New Delhi
(Appellant)		(Respondent)

ITA No. 1569/Del/2021
Asstt. year 2018-19

Mindeast Integrated Steels Ltd. H-1, Zamrudpur Community Centre, Kailash Colony, New Delhi – 110 048 PAN AAACM0846P	<u>Vs.</u>	ACIT, CC-2, New Delhi
(Appellant)		(Respondent)

Assessee by:	Shri Salil Aggarwal, Sr. Advocate Shri Shailesh Gupta, Advocate
Department by:	Shri Dilip Singh Kothari, CIT DR DR

Date of Hearing :	<u>15.06.2023</u>
Date of Pronouncement:	<u>26.07.2023</u>

ORDER

PER AMIT SHUKLA, JM

The cross appeals have been filed by the Revenue as well as by the assessee against the order dated 08.09.2021 passed by Ld. CIT-23, New Delhi for the assessment year 2017-18 and order dated 09.09.2021 for the assessment year 2017-18. We first take up the cross appeals for the assessment year 2017-18.

2. The grounds raised by the Revenue reads as under:-

“On the facts and circumstances of the case, the Ld. CIT (A) has erred in allowing the disallowance of Rs. 1,37,43,900/- u/s 14A r.w.s. rule 8D’ without appreciating the CBDT circular no. 5 of 2014 which clarifies that disallowance of the expenditure u/s 14A read with Rule 8D even where an assessee has not earned any exempt income.”

Rs. 47,55,390/-

“That on the facts and circumstances of the case, the Ld. CIT(A) has erred in restricting the disallowances of expenses of Rs. 1,47,31,200/- made @ 1% of the total claim of expenses, to Rs. 73,65,600/- @0.5% of the claim, though the assessee neither furnished the details of expenses during the assessment proceedings nor furnished the details of expenses during the appellate proceedings.’

Rs. 25,48,498/-

Whereas the assessee in the grounds of appeal has raised following grounds:-

1. *“That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding disallowance of Rs. 1,22,36,776/- and by invoking provision of section 2(24)(x) read with section 36(l)(va) of the Act in assessment order dated 12.12/2019 u/s 144 of the Act.*
2. *That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that disallowance made is contrary to judgment of Apex Court in the case of IT vs. Alom Extrusions Ltd. reported in 319 ITR 306 and, therefore the same is untenable and liable to be deleted as such.*
3. *That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts by upholding disallowance of Rs. 73,65,600/- representing 50% of the ad-hoc disallowance of Rs. 1,47,31,200/- made in the assessment order dated 12.12.2019 u/s 144 of the Act, out of following expenses:*

<u>Sr. No.</u>	<u>Head of Expenses</u>	<u>Amount (Rs. in millions)</u>
i)	Royalty Cost	769.94
ii)	Mining Cost	388.49
iii)	Material Handling Charges	86.61
iv)	Travelling and Conveyance	45.18
v)	Donations and Contributions	25.87
vi)	Legal and Professional	64.27
vii)	Miscellaneous expenses	92.67

4. *That the finding of the learned Commissioner of Income Tax (Appeals) that “Despite being given adequate opportunity, the appellant did not furnish any details in support of above expenses before the Assessing officer. No further details have been submitted even during the appeal proceedings. ” is contrary to the facts and evidences on record and is completely misconceived.*
5. *That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that all the expenses were incurred by the appellant wholly and exclusively for the purpose of business.”*

3. The brief facts qua the issue raised by the Department in ground No. 2, i.e., deletion of disallowance of Rs. 1,37,43,900/- under section 14A r.w.r 8D that assessee had made investments in certain equity shares of Rs. 1,69,39,20,000/-, are that, the Ld. Assessing Officer invoked the provision of Rule 8D holding that an amount equal to one percent of the annual average of the monthly and average of opening and closing balances of the value of investment would be added and accordingly he made disallowance of Rs. 1,37,43,90,000/-. Ld. CIT(A) has deleted the said disallowance on the ground that there is no exempt income earned by the assessee and accordingly following the judgment of Hon’ble Delhi High Court in the case of **CIT vs Holicim India Private Limited (2015) 57 taxmann.com 28 (Delhi)** and **Cheminvest Ltd. vs. CIT(2015) 61 taxmann.com 118(Delhi)** held that no disallowance can be made.

4. Before us, the Ld. DR strongly relied upon the CBDT No. 5 of 2014 and amendment made by the Finance Act 2022 to section 14A by inserting a non obstante clause and explanation to section 14A w.e.f. 01.04.2022.

5. After hearing both the parties and on perusal of the order, we find that admittedly assessee has not earned any exempt income during the year for any investment. Now it is well settled fact that no disallowance could be made under section 14A when no exempt income has been earned. The Hon'ble Delhi High Court in the case of PCIT vs. Era Infrastructure (India) Ltd. reported in 448 ITR 674 has categorically held that, firstly, no disallowance can be made when no exempt income has been earned by the assessee and the amendment made by the Finance Act 2022 in section 14A by inserting a non obstante clause and explanation will apply prospectively i.e., w.e.f. 01.04.2022 and will not have any retrospective effect. Accordingly the order of the Ld. CIT (A) deleting the disallowance is confirmed and consequently ground No. 1 raised by the Revenue is dismissed.

6. Now coming to the second issue raised by the Revenue and Ld. CIT (A) has erred in restricting the disallowance of expenses made by the Assessing Officer @ 1% of the total claim of expenses @0.5%. The Ld. AO during the course of assessment proceedings noted that assessee has incurred huge expenses claimed under the profit and loss account under the following heads:-

1. Royalty Cost of Rs. 769.94 (figures in million).
2. Mining Cost of Rs. 388.49 (figures in million).
3. Material handling charges of Rs. 86.61 (figures in million).
4. Travelling and conveyance of Rs. 45.18 (figures in million).
5. Donations and contributions of Rs. 25.87 (figures in million).
6. Legal and professional of Rs. 64.27 (figures in million).
7. Miscellaneous expenses of Rs. 92.76 (figures in million).

7. Since assessee could not furnish any details, the Assessing Officer has added 1% of the entire expenses for non business purpose which worked out

to Rs. 1,47,31,200/-. Before the Ld. CIT (A) it was submitted that assessee company has disallowed entire expense of donation of Rs. 2,58,73,250/- in the return of income. However the disallowances made by the Assessing Officer have no justification and is purely adhoc disallowance. It was further stated that identical claim was allowed in the earlier years in the order passed under section 143(3). However, the Ld. CIT (A) held that since assessee could not furnish any details in support of any of the expenses before the Assessing Officer and no further details have been submitted during the appellate proceedings therefore he restricted the disallowance to the 50% which was made by the Assessing Officer and addition of Rs. 73,65,600/- has been confirmed. Against this both department and assessee are in appeal before us.

8. Admittedly before the Assessing Officer the assessee has not furnished any details of expenses nor has tried to substantiate it before the Ld. CIT (A). Under these circumstances, we are unable to accept the contention of the Ld. Counsel that entire disallowance should be deleted. Even though expenses have been allowed in the earlier years but that does not lead to conclusive inference that in this year disallowance cannot be made as nothing has been brought on record that, whether in those years also assessee had not furnished any details and Assessing Officer has accepted all the expenses. Thus we do not find any reason to deviate findings of the Ld. CIT (A) and we uphold the order of the Ld. CIT (A) restricting the disallowance to .05% of the aforesaid expenses. Accordingly ground No. 2 raised by the Revenue as well as ground No. 3 to 5 of the assessee are dismissed.

9. In so far as disallowance of Rs. 1,22,36,776/- by invoking the provision of section 2(24)(x) read with section 36(1)(va) of the Act, admittedly the contribution to the provident fund received from the employees have been made after the due date which is evident from the details incorporated in the assessment order from pages 10 to 14. Both the parties have agreed that now the issue stands covered against the assessee in view of the

decision of **Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd.(2022) 143 taxmann 178.** Accordingly the disallowance made under section 36(1)(va) of the Act on accounts of the delayed deposit to contribution to ESI and EPF has confirmed and the ground raised by the assessee is dismissed.

10. In assessment year 2018-19 the only issue which has been raised by the assessee pertains to Rs. 2,82,94,440/- by invoking provision of section 2(24)(x) read with section 36(1)(va) and 50% of the ad-hoc disallowance sustained by the Ld. CIT(A) of Rs. 2,59,92,300/-. Since both these issues have been decided against the assessee in assessment year 2017-18 having identical facts and similar finding of the Assessing Officer and Ld. CIT (A) therefore in view of the finding given above the appeal of the assessee is dismissed.

10. In the result, appeal of the Revenue for assessment year 2017-18 and appeal of the assessee for assessment year 2017-18 and 2018-19 are dismissed.

Order pronounced in the open court on 26th July, 2023.

**sd/-
(G.S. PANNU)
PRESIDENT**

Dated: 26/07/2023

**sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

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Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	