

आयकर अपीलीय अधिकरण न्यायपीठ नागपूर में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL, NAGPUR

(Through Virtual Court)

BEFORE SHRI R.S. SYAL, VICE PRESIDENT  
AND  
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.103 & 104/NAG/2018  
निर्धारण वर्ष / Assessment Years : 2007-08 & 2008-09

Deputy Commissioner of Income Tax,  
Central Circle – 2(1), Nagpur

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Gupta Metallics & Power Ltd.,  
5<sup>th</sup> Floor, Gupta House, Civil Lines,  
Nagpur – 440012

PAN : AABCG9051D

.....प्रत्यर्थी / Respondent

प्रत्याक्षेप सं. / CO Nos.12 & 13/NAG/2018  
निर्धारण वर्ष / Assessment Years : 2007-08 & 2008-09

M/s. Gupta Metallics & Power Ltd.,  
5<sup>th</sup> Floor, Gupta House, Civil Lines,  
Nagpur – 440012

PAN : AABCG9051D

.....अपीलार्थी / Appellant

बनाम / V/s.

Deputy Commissioner of Income Tax,  
Central Circle – 2(1), Nagpur

.....प्रत्यर्थी / Respondent

Assessee by : Shri Rajesh V. Loya  
Revenue by : Shri Maurya Pratap

सुनवाई की तारीख / Date of Hearing : 26-07-2023

घोषणा की तारीख / Date of Pronouncement : 31-07-2023

## आदेश / ORDER

### **PER S.S. VISWANETHRA RAVI, JM :**

Both the appeals by the Revenue against the common order dated 23-02-2018 passed by the Commissioner of Income Tax (Appeals)-3, Nagpur [‘CIT(A)’] for assessment years 2007-08 and 2008-09. The assessee has also filed Cross Objections in the appeals filed by the Revenue.

2. Upon hearing, we note that the issues raised in both the appeals and cross objections are similar basing on the same identical facts. Therefore, with the consent of both the parties, we proceed to dispose off above said appeals and cross objections together and to pass a consolidated order for the sake of convenience.

**3. First, we shall take up the Cross Objections filed by the appeal in CO Nos. 12 & 13/NAG/2018 for A.Ys. 2007-08 and 2008-09.**

4. The ld. AR submits that the assessee is not interested to prosecute Cross Objections. Hence, the same are dismissed as not pressed.

**5. Now, we shall take up the appeal filed by the Revenue in ITA No. 103/NAG/2018 for A.Y. 2007-08.**

6. The brief facts of the case are that the assessee is a company engaged in the business of manufacturing of sponge iron, trading of coal, coal fines etc. A search and seizure operation u/s. 132 of the Act was conducted in the office and other premises of the assessee on 29-07-2009.

According to the AO incriminating documents were found and seized during the course of said search. In response to the notice u/s. 153A of the Act, the assessee filed return of income declaring a total income of Rs.1,81,67,470/-. The AO issued notices u/s. 142(1) and 143(2) of the Act determined the total income of the assessee at Rs.4,91,03,090/- vide its order dated 28-12-2011 u/s. 143(3) r.w.s. 153A of the Act. Having aggrieved with the same, the assessee challenged the said order before the CIT(A) specifically on account of disallowance of depreciation, financial expenses and expenditure from power and fuel account vide ground Nos. 2, 3, and 4 therein. The CIT(A) restricted the said depreciation to an extent of Rs.3,20,253/-, deleted addition made on account of financial expenses and power and fuel account. Aggrieved with the same, now, the Revenue is before us challenging the action of CIT(A) in giving relief to the assessee on account of financial expenses and power and fuel account.

7. Ground No. 1 raised by the Revenue challenging the action of CIT(A) in deleting the addition of Rs.2,90,97,587/- made on account of finance charged and interest holding that the expenditure incurred are directly relatable to the assessee's business in the facts and circumstances of the case.

8. Shri Maurya Pratap, the ld. DR relied on the order of AO. Shri Rajesh V. Loya, the ld. AR submits that the issue is covered in favour of the assessee by consolidated order dated 29-03-2019 for A.Y. 2010-11 in ITA No. 201/NAG/2014 and referred to page No. 1 of the paper book and supported the order of CIT(A).

9. Heard both the parties and perused the material available on record. We find during the course of assessment proceedings, the AO found that there was no delivery of the trading commodity in respect of coal basing on the statement of Shri Mahesh Gupta recorded u/s. 131 of the Act, show caused the assessee to prove the genuineness of the expenses. According to the AO, the assessee submitted general reply but not proved the genuineness of each of the expenses relating to the coal trading activities and other activities. The AO proceeded to disallow expenses on proportionate basis excluding all the expenses directly related to the production and manufacturing of activities which are delivery basis. Accordingly, disallowance of Rs.2,90,97,587/- were added to the total income of the assessee vide para 9.7 of the assessment order. The CIT(A) observed that there was no addition of this nature was made in the A.Ys. 2005-06 and 2006-07. The ITAT, Nagpur Bench confirmed the reasoning of CIT(A) for A.Y. 2008-09 by holding that the expenditure is directly relatable to the business of the assessee. We note that the Co-ordinate Bench of this Tribunal in assessee's own case for A.Y. 2010-11 agreed with the reasons recorded by the CIT(A) on same issue on similar facts and dismissed the appeal of the Revenue by holding no contrary material furnished before the Tribunal challenging the reasoning of CIT(A). The Tribunal discussed the issue in para Nos. 6 and 7 of the said order. The relevant portion at para Nos. 6 and 7 are reproduced hereunder for ready reference :

*“6. Both sides heard. Orders of the authorities below perused. The Revenue is in appeal against deleting of various expenditures aggregating to Rs.1,63,64,142/-. The Assessing Officer made addition raising doubt over the genuineness of expenditures as well as the quantum of expenditure. In First Appellate Proceedings the Commissioner of Income Tax (Appeals) deleted the addition by observing as under :*

*“In my considered view, the AO has failed to discharge the onus upon him to conclusively prove that the expenditure incurred are bogus. The AO in Page 4 para 4.4 of the Assessment Order agreed that the*

*expenses claimed had to be restricted to only those expenses which were related to non delivery transaction or paper transactions and in Para 4.5 further held that it is reasonable to allow only those expenses which are genuinely incurred to carry out such paper transactions. Thus the AO agrees that the expenses are allowable. However, he failed to bring on record any infirmity in the individual head of expenditure which had been considered for disallowance. I find that the assessee has paid interest to banks on the LC transaction and finance facility. Similarly, the bank charges and commission have been paid for LC discounting. The interest paid to others is also for securing funds for the purpose of business. It is nowhere established by the AD that the funds have been utilised for personal purposes or non business activity. The genuineness of the expenditure cannot be doubted as the payments are made to bank and other parties. The manufacturing expenses like factory expenses, electricity charges etc. have been incurred to carry out manufacturing activity and the AO erred in disallowing the expenditure merely construing the manufacturing activity as paper transaction. No defect has been pointed out in any of such expenditure. The AO has disallowed professional and legal charges, travelling expenses, consultancy charges and selling expenses only on the basis that such expenses are not required without going into the details of such expenditure, and whether they have been actually incurred or not. The expenditure has been disallowed by the AO summarily without proper verifications. I find that the other expenses in the Profit and Loss Account which are also of similar nature have been allowed as deduction. Since it is held that the assessee had carried out the regular business activity on which profit is earned, the expenditure incurred for such transaction or for facilitating the business have to be allowed. I find that the assessee has incurred expenditure and no defect/infirmities have been pointed out by the A.O. It is to be further noted that no evidence was found during search on the basis of which AO could have disallowed the expenditure. In fact, there is no such finding at all.*

*Here, I also find that the similar nature of transactions and the business activity of the assessee and the expenditure incurred by the assessee were subject to scrutiny in earlier occasion as well. Proceedings u/s.153A were initiated for A.Y.2004-05 in pursuance of search conducted earlier on 24-12-2003 and the assessment order was passed u/s.143(3) r.w.s. 153A on 31-03-2006. The expenditure were very much allowed and there was no edition made by the AO of this nature. Further, on the similar facts, the CIT(A)-I vide his appellate order dated 11/03/2013 in the case of Shri Krishna Gupta for A.Y. 2008-09 vide appeal number CIT(A)-11545/2011- 12 has held that the expenditure is directly relatable and without which the appellant would not have earned income and accordingly has allowed the appeal.*

*Considering the aforesaid facts, I hold that the expenditure claimed by the assessee are incurred as well as directly relatable for the purpose of earning profit on the activities carried out by the assessee and therefore the disallowance of Rs.1,63,64,142/- made by the AO is unjustified and therefore directed to be deleted. The ground of appeal is allowed in favour of the appellant.”*

*7. The ld. DR has not been able to controvert the findings of First Appellate Authority. In the absence of any contrary material, we find no reason to interfere with the reasoned findings of Commissioner of Income Tax (Appeals). The same are upheld, accordingly and the appeal of Revenue is dismissed being devoid of any merit.”*

10. In the light of the above, the CIT(A) in the present case by following the order of ITAT for A.Y., 2008-09, wherein, we note that the ITAT confirmed the order of CIT(A) in holding the expenditure concerning ground No. 1 before us is directly related to the business of the assessee. The ld. DR could not bring on record any order contrary to the view taken by the Tribunal in A.Y. 2008-09 and also in A.Y. 2010-11. Therefore, we find no reason to interfere with the reasons recorded by the CIT(A) in holding the expenditure claimed by the assessee is not relatable to the business of the assessee. Thus, ground No. 1 raised by the Revenue is dismissed.

11. Ground No. 2 raised by the Revenue challenging the action of CIT(A) in deleting the expenditure of Rs.9,03,032/- holding that the same as revenue in nature in the facts and circumstances of the case.

12. We note that the assessee has shown power and fuel expenses in the profit and loss account to an extent of Rs.1,86,70,635/-. According to the AO the said expenditure incurred for generating electricity through use of DG set and the electricity produced by the said DG set is also used for erection of plant and machinery which are yet to be put to use. Accordingly, the AO treated 5% of the said expenditure of Rs.9,33,532/- (5% of Rs.1,86,70,635/-) as capital expenditure and disallowed the same vide para 10 of the assessment order. The CIT(A) restricted the same to Rs.30,500/- of 10% of Rs.3,05,206/- and gave relief of Rs.9,03,032/- vide para 5.4.3 of the impugned order is reproduced here-in-below for ready reference :

*“5.4.3 I have gone through the assessment order, the grounds of appeal and the appellant’s submission. On careful examination of the expenditure on Power & Fuel expenses, I find that the expenditure of Rs.1,86,70,635/- is incurred for payment to MSEB for electricity charges and also for fuel expenses of generator set. The amount of expenditure on fuel expenses in the year under consideration is approximately Rs.20 lacs. Thus*

*to that extent, I find that the AO erred in holding that the total expenditure was incurred for generating electricity through use of DG set. There is no dispute about the fact that some portion of the factory is under installation process and the appellant has incurred expenses during the year under consideration and has capitalized the same. The AO has mentioned that the Work in Progress comprises of project goods, equipments, plant & machinery and erection charges as well. It is seen from the assessment order that the AO has made disallowance applying a certain percentage on Power & Fuel expenses without any real basis. There is no evidence to suggest that the appellant has incurred expenses on power & fuel towards construction of Plant & Machinery. However, in the written submission of the AR of the appellant, it is claimed that the estimate is not on sound basis and even if the expenditure is disallowed, it should be on the basis of erection expenses incurred by the appellant. The AR of the appellant informed that similar nature of disallowance was made in A.Y. 2005-06 in order u/s. 143(3). My attention was drawn to the Page 20 of the appellate order no. CIT(A)-III/497/2007-08 dated 5-1-2017 for A.Y. 2005-06 in which the addition of aforesaid nature was contested. It was held by the CIT(A) that the estimated disallowance should be determined on the basis of mechanical and fabrication work expenses and the capital expenditure on account of Power & Fuel were estimated @10% of the mechanical and fabrication work expenses. I find that the appellant incurred expenditure on erection charges in the year under consideration at Rs.3,05,206/-. Therefore the disallowance of 10% of the aforesaid amount which comes to Rs.30,500/- is a reasonable estimate and the addition to that extent is confirmed. The appellant is allowed relief of Rs.9,03,032/-. The ground is partly allowed.”*

13. On perusal of the above finding of the CIT(A), we note that the assessee incurred expenditure on erection charges to an extent of Rs.3,05,206/- in the year under consideration which is not disputed by the ld. AR. Therefore, the disallowance restricted by the CIT(A) is reasonable. Thus, we find no infirmity in the order of CIT(A) and it is justified. Thus, the ground No. 2 raised by the Revenue is dismissed.

14. In the result, the appeal of Revenue is dismissed.

**ITA No. 104/NAG/2018, A.Y. 2008-09**

15. We find that the facts in ITA No. 104/NAG/2018 are identical to ITA No. 103/NAG/2018 except the variance in amount. Since, the facts in ITA No. 104/NAG/2018 are similar to ITA No. 103/NAG/2018, the findings given by us while deciding the appeal of Revenue in ITA No.

103/NAG/2018 would *mutatis mutandis* apply to ITA No. 104/NAG/2018, as well. Accordingly, the appeal of Revenue is dismissed.

16. To sum up, both the appeals of Revenue as well as both the Cross Objections by the assessee are dismissed.

Order pronounced in the open court on 31<sup>st</sup> July, 2023.

Sd/-  
(R.S. Syal)  
VICE PRESIDENT

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 31<sup>st</sup> July, 2023.  
रवि

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-3, Nagpur.
4. CIT(Central), Nagpur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपूर,  
/ DR, ITAT, Nagpur.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune