

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
SHRI YOGESH KUMAR U.S, JUDICIAL MEMBER**

ITA No. 6512/DEL/2017 [A.Y. 2013-14]

The Dy. C.I.T  
Circle - (16) 2  
New Delhi

Vs.

M/s Meru Minerals Pvt Ltd  
296, Forest Lane, Neb Sarai  
Sainik Farm, New Delhi

PAN - AAECM 2096 F

(Applicant)

(Respondent)

Assessee By : Shri Manoj Kumar, CA

Department By : Ms. Shweta Yadav, Sr. DR

**Date of Hearing : 15.01.2024**

**Date of Pronouncement : 17.01.2024**

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-**

This appeal by the Revenue is preferred against the order of the  
ld. CIT(A) - 6, New Delhi dated 23.08.2017 pertaining to A.Y. 2013-14.

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

- "1. Whether on facts and in circumstances of the case, the Ld. CIT(A) is legally justified in deleting disallowance of interest expense of Rs. 7,31,25,643/- u/s 36(1)(iii) of the Income Tax Act (the Ac9 by ignoring the fact that the assessee had failed to prove the direct nexus between business income and huge interest expenses so claimed even after providing sufficient opportunity?
2. Whether on facts and in circumstances of the case, the Ld. CIT(A) is legally justified in deleting disallowance of interest expenses of Rs.7,31,25,643/- u/s 36(1)(iii) of the Act by ignoring a fact that the assessee was making huge payment of interest on loan and the assessee had not proved test of commercial expediency with regard to interest free advance and investment of interest bearing fund?
3. Whether on facts and in circumstances of the case, Ld. CIT(A) is legally justified in allowing relief to the assessee on the basis of decision of appellate authorities on identical issue despite the fact that principle of res-judicata is not applicable to Income Tax proceedings as each assessment year is a separate proceedings year?
4. That the appellant craves leave to add, amend, alter or forgo any ground/(s) of appeal either before or at the time of hearing of the appeal. "

3. Briefly stated, the facts of the case are that the assessee filed its Return of Income on 29.09.2013 declaring loss of Rs. 1,13,58,176/-. Return was selected for scrutiny assessment and accordingly, statutory notices were issued and served upon the assessee.

4. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has earned interest income of Rs. 8,60,30,049/- and has also incurred interest expense of Rs. 9,75,00,857/-. When asked, the assessee explained that it has received loan of Rs. 75 crores from JSW Energy Ltd on which it is paying interest @ 13% and advanced Rs. 75 crores to IIC Ltd @ 14%.

5. The Assessing Officer further examined the movement of loans and advances and found that interest income as on 31.03.2013 was Rs. 8.60 crores as against Rs. 1.09 crores as on 31.03.2012 and interest expense as on 31.03.2013 was 9.75 crores as against Rs. 1.70 crores as on 31.03.2012.

6. The Assessing Officer formed a belief that the assessee has diverted the interest bearing funds and went on to disallow Rs. 7,31,25,643/- out of total interest cost of Rs. 9,75,00,857/-.

7. The assessee challenged the addition before the Id. CIT(A) and convinced him that the same position was there in A.Y 2012-13 and also in A.Y 2014-15 where the Assessing Officer has accepted the claim. It was further contended that the assessee has been showing interest as income under the head “Profits and gains of business” and, therefore, there is no question of any disallowance of interest.

8. The Id. CIT(A), being convinced, deleted the impugned disallowance.

9. Before us, the Id. DR strongly supported the findings of the Assessing Officer and read the relevant operative part.

10. The Id. counsel for the assessee reiterated what has been stated before the lower authorities.

11. We have given thoughtful consideration to orders of the authorities below. The undisputed fact is that the assessee borrowed funds @ 13% interest and lent the same @ 14% interest which means that the assessee has been charging interest more than what it is paying and most importantly, the assessee has never lent money

interest free. There is no question of diversion of interest bearing funds towards interest free funds. Interest income has been accepted under the head "Profit and gains of business" as was done in earlier A.Y and subsequent A.Y.

12. We have carefully gone through the Memorandum of Association of the assessee company. We find that the following objects of the company to be most relevant for the issues under consideration:

*"16. To advance money either with or without security, and to such persons and upon such terms and conditions as the Company may deem fit and also to invest and deal with the money of the Company not immediately required, in or upon such investments and in such manner as, from time to time, may be determined, provided that the Company shall not carry on the business of banking as provided in the Banking Regulations Act, 1949.*

*17. Subject to section 58-A and 292, 293, 295 & 372A of the Act and the Regulations made thereunder and the Directions issued by the Reserve Bank of India, to receive money on deposit or loan and borrow or raise money in such manner and at such time or times as the Company thinks fit and in particular by the issue of debentures, debentures-stock, perpetual or otherwise and to secure the repayment of any money borrowed, raised or*

*owing by mortgage, charge or lien upon all or any of the properties, or assets or revenues and profits of the Company both present and future, including its uncalled capital and also by a similar mortgage, charge or lien to secure and guarantee the performance by the Company or any other person or Company of any obligation undertaken by the Company or such other person or company to give the lenders the power to sale and such other powers as may seem expedient and purchase redeem or payoff any such securities."*

13. The above objects clearly show that the Assessing Officer has proceeded on wrong fact that the assessee is not in the business of borrowing/lending money. Considering the facts in totality, we could not find any error or infirmity in the findings of the Id. CIT(A).

14. In the result, the appeal of the Revenue in ITA No. 6512/DEL/2020 is dismissed.

The order is pronounced in the open court on 17.01.2024.

Sd/-

[YOGESH KUMAR U.S]  
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]  
ACCOUNTANT MEMBER

Dated: 17<sup>th</sup> JANURARY, 2024

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

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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	
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