

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**  
**AND**  
**SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA Nos. 1688, 1687, 1686, 1685, 1683, 1684/MUM/2023**  
**Assessment Years: 2014-15 to 2019-2020**

Matix Fertilizers and Chemicals  
Ltd.,  
Poonam Chambers, B Wing, 5<sup>th</sup>  
floor, Dr. Annie Besant Road,  
Worli, Mumbai-400018.

**PAN No. AAGCM 1141 D**  
**Appellant**

**Vs.** Commissioner of Income-tax-  
CIT(A) 53, Mumbai.  
Asst. Commissioner of  
Income-tax, Central Circle  
5(4),  
Room No. 1927, 19<sup>th</sup> floor, Air  
India Building, Nariman Point,  
Mumbai-400021.

**Respondent**

**ITA Nos. 2154, 2150, 2152, 2148, 2149, 2151, 2153/MUM/2023**  
**Assessment Years: 2013-14 to 2019-2020**

Asst. CIT-CC-5(4),  
Room No. 1927,  
Air India Building,  
Nariman Point,  
Mumbai-400021.

**Appellant**

**Vs.** Matix Fertilizers and  
Chemicals Ltd., Panagarh  
Industrial Park, Panagarh,  
Bardhaman,  
West Benal-713148.

**PAN No. AAGCM 1141 D**  
**Respondent**

**CO No. 108/MUM/2023**  
**(Arising out of ITA No. 2154/MUM/2023)**  
**Assessment Years: 2013-14**

Matix Fertilizers and Chemicals  
Ltd., Panagarh Industrial Park,  
Panagarh, Bardhaman,  
West Benal-713148.

**PAN No. AAGCM 1141 D**  
**Appellant**

**Vs.** Asst. CIT-CC-5(4),  
Room No. 1927, Air India  
Building, Nariman Point,  
Mumbai-400021.

**Respondent**



**Assessee by** : Mr. Ajay R. Singh, &  
Mr. Yogesh Joiode, &  
Mr. Akshay Pawar  
**Revenue by** : Smt. Sanyogita Nagpal, CIT-DR  
Date of Hearing : 04/12/2023  
Date of pronouncement : 18/01/2024

## **ORDER**

### **PER BENCH**

These appeals by the Revenue & assessee and cross-objection by the assessee are directed against separate orders passed by the Ld. Commissioner of Income-tax (Appeals)-53, Mumbai, [in short 'the Ld. CIT(A)'] for assessment years 2013-14 to 2019-2020 respectively. As common grounds are involved in those appeals and cross objection, therefore, same were heard together and disposed off by way of this consolidated order for convenience.

1.1. The issues involved in the appeals filed by Revenue are primarily: (i) taxation of interest earned on 'margin money' with banks under the head 'income from other sources'; (ii) disallowance of over-valued part of cost of imported capital goods out of capital work in progress; (iii) disallowance of interest on capital borrowed for overvalued part of imported capital goods; (iv) treating compensation received from M/s Essar Oil Ltd. as revenue receipt in nature; (v) disallowance of depreciation claimed on overvalued part of work-in-progress post capitalization.



1.2. The issues raised in appeals and cross objection filed by the assessee include challenging validity of making additions by the AO without aid of any incriminating material found during the course of the search, qua (i) taxation of interest earned on margin money with bank under the head 'income from other sources'; (ii) disallowance of over-valued part of cost of imported capital goods; (iii) treating compensation received from M/s Essar Oil Ltd. as revenue receipt in nature.;

2. Before us, both the parties agreed to take up the appeal for assessment year 2014-15 as a lead case and to follow the decision of the same in other year *mutatis mutandis*. Accordingly, we take up the appeal of the Revenue and the assessee for AY 2014-15 for adjudication. The grounds of the appeal of the Revenue for AY 2014-15 are reproduced as under:

"1. Whether the Ld.CIT (A) is justified in deleting the disallowance u/s 37(1) of the Act. of Rs. 87.89.98.214/- being interest expense on borrowed funds holding that the ground is interlinked with the disallowance of Rs. 129.32.54.291/-?"

2. The Applicant craves to leave, 10 add. 10 amend and/or to alter any of the ground of appeal. if need be.

3. "Whether the Ld.CIT (A) is justified in deleting the addition u/s 56 of the Act, of Rs. 1.00.77.381/-, despite the fact that the opportunities were accorded to the assessee by the AO to substantiate its claim that the deposits are kept as margin money which are under lien with Bank in respect of guarantees and letter of credit for the purpose of setting up its plant\*?"

4. "Whether the Ld.CIT (A) is justified in relying upon the decision of Hon'ble Apex Court in the case of CIT vs. Bokaro Steel Lid. 236 ITR 315 and CIT Vs. Karnal Co-op Sugar Mills Lid., as the facts of the present case is completely different than the judiciale pronouncement relied upon by the Ld.CIT(A).\*?"



5. *\*Whether the Ld.CIT (A) is justified in deleting disallowance u/s 37(1) of the Act. of Rs. 129.32.54.291/- thereby reducing the CWIP. ignoring the findings of the DRI giving details of nexus of various cuties and how they have indulged in over valuation and import of goods and the findings of the AO that the assessee was in possession of invoiced issued by foreign suppliers to Global Supplies (UAE) FZE and Global Supplies (UAE) FZE is issuing inflated value invoices to EPIL which in tum has been used by the assessee to inflate cost of its capital goods.\*?*

6. *"Whether the Ld.CIT (A) is justified in deleting disallowance u/s 37(1) of the Act, of Rs. 129,32.54.291/- thereby reducing the CWIP. ignoring the findings that the declared values in the impugned 92 consignments imported by EPIL/Matix totally amounting to Rs. 1510,59,23,423/-, CIF on the basis of inflated invoice prices of the intermediary GSF. do not represent the actual value of the goods which appears to be Rs. 780.04.42.8821. Thus. an amount of Rs. 750.54,80.781/- has been siphoned off by over valuation to and for the benefit of their related entity GSF by EPIL & Matix. Matix on their part appear to have aided and abetted EPIL in their act of over valuation and siphoning off of foreign exchange as brought out by DRI in its report\*?*

7. *"Whether the Ld.CIT (A) is justified in deleting the disallowance u/s 37(1) of the Act. of Rs. 129,32,54.291/- thereby reducing the CWIP. ignoring the Statement of Shri Vijay Kumar Goyal (CA and General Manager (F&A) in the assessee company ] which was recorded on oath us. 132(4) of the IT. Act. 1961 on 11.05.2018 during the course of Search proceedings wherein he has categorically explained that how an invoice of Sungjin Geotec Co. Lid.. Korea with an original price of \$11,98.190/- with gross weight of 154,827 kgs has been over valued at \$32.98.500/- through routing the invoice from Global Supplier (UAE) FZE to BPIL. which in tum has billed the same to the assessee company at an overvalued valuation and on perusal of bill of landing seized during the course of scarch action, it is seen that the original supplier Sungjin Geotec Co. Ltd. Korea has shipped this consignment directly to EPIL at Port Haldia/India. It is observed that Global Supplies (UAE) FZE has been used a routing entity."*

2.1 The grounds of the assessee's appeal for AY 2014-15 are reproduced as under:

1. *On the facts and circumstances of the case and in Rs. 1,00,26,394/- law, the Hon'ble CIT(A) erred in confirming the order of learned assessing officer (Ld. AO) alleging overvaluation of capital goods recorded in CWIP in context with Onshore Supply Contract with Essar Projects India Ltd (EPIL) of Rs. 3,08,97,979/- The Hon'ble CIT(A) erred in comparing, the actual value of capitalisation made in books of Rs.838 crores, with the Onshore Supply Contract Value of Rs. 765 cores as fixed initially. The hon'ble CIT(A) failed to take the cognisance of the submissions made during the appellate proceedings. We therefore pray*



to your honour to delete the addition made and necessary direction shall be given in this regard.

1.1 On the facts and circumstances of the case and in N.A. law the, the hon'ble CIT (A) erred in confirming the order of Ld. AO, without appreciating the fact that appellant has given a Lumpsum Contract to EPIL for Rs. 3200 crores which were subsequently divided into three separate contracts including the Onshore Supply Contract of Rs.765 crores and the Total Project cost has not exceeded the the Lumpsum Contract Value.

1.2 On the facts and circumstances of the case and in N.A. law, the hon'ble CIT (A) erred in confirming the order of Ld. AO, without appreciating the fact that the entire project expenses were authorized by Project & Development India Ltd (PDIL), Tata Consulting Engineers Ltd (TCE) and the project lenders consisting more than 12 Bankers financial institutions.

1.3 On the facts and circumstances of the case and in NA law, the hon'ble CIT (A) erred in confirming the order of Ld. AO without appreciating the fact that the order was passed U/s 153A of the Act without considering the fact that assessment for the year under consideration was completed U/s 143(3) of the Act and no incriminating documents in respect of such disallowances were found during the course of entire search proceedings.

1.4 On the facts and circumstances of the case and in N.A. law, the hon'ble CIT (A) erred in confirming the order of Ld. AO without appreciating the fact that addition of Rs. 3,08,97,979/- was without giving any show cause notice and without providing any opportunity of being heard to furnish explanation in this regard.

2. On the facts and circumstances of the case and in Rs.5,62,60,430/ - law, the Hon'ble CIT(A) erred in confirming the order of Ld. AO making addition of interest of Rs. 17,33,75,749/- arbitrarily calculated 12% alleging that appellant has utilised the borrowed funds for acquisition of alleged overvalued capital goods recorded in CWIP in context with Onshore Supply Contract. We therefore pray to your honour to delete the addition made and necessary direction shall be given in this regard.

2.1 On the facts and circumstances of the case and in N.A. law, the Hon'ble CIT(A) erred in confirming the action of Ld. AO, there by presuming that the entire project was funded with Borrowed funds without appreciating the fact that appellant was mandated to maintain the Debt Equity ratio of 2:1.

2.2 Without prejudice to the ground no. 2 and 2.1, on N.A. the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in confirming the action of Ld. AO without appreciating the fact that Average rate of interest for the funds borrowed by the appellant during the A.Y. 2013-14 and 2014-15 was 11.42% and 9.18% respectively.



*2.3 On the facts and circumstances of the case and in N.A. law, the hon'ble CIT (A) erred in confirming the order of Ld. AO without appreciating the fact that the order was passed Us 153A of the Act without considering the fact that no incriminating documents in respect of such disallowance were found during the course of entire search proceedings.*

2.2 Before us the assessee raised additional grounds, which are reproduced as under:

*1. On the facts and circumstances of the case and in law, the hon'ble CIT (A) erred in confirming the order of Ld. AO without appreciating the fact that the order was passed U/s 153A of the Act without considering the fact that assessment for the year under consideration was completed U/s 143(3) of the Act and **no incriminating documents** in respect of interest income of **Rs. 100,77,381/-** were found during the course of entire search proceedings.*

*2. On the facts and circumstances of the case and in law, the hon'ble CIT (A) erred in confirming the order of Ld. AO without appreciating the fact that the order was passed U/s 153A of the Act without considering the fact that assessment for the year under consideration was completed U/s 143(3) of the Act and **no incriminating documents** were found during the course of entire search proceedings in respect of such disallowances of alleged overvalued Offshore supply capital goods of **Rs. 129,32,54,291/-***

*3. On the facts and circumstances of the case and in law, the hon ble CIT (A) erred in confirming the order of Ld. AO without appreciating the fact that the order was passed U/s 153A of the Act without considering the fact that assessment for the year under consideration was completed Us 143(3) of the Act and **no incriminating documents** were found during the course of entire search proceedings in respect of disallowances of **interest Rs. 87,89,98,214/-** charged on procurement of alleged overvalued offshore supply capital goods.*

3. The additional grounds raised by the assessee being purely of legal nature, without requiring any investigation of the fresh facts, therefore same were admitted after hearing both the parties.

4. Briefly stated, facts of the case are that the assessee company is engaged in the business of manufacturing/production and sale of fertilizers. The company set up a plant for production of 'ammonia'



and 'urea' at Industrial Complex Raniganj (East), Burdwan District, West Bengal. For setting up of said plant, the assessee awarded an 'Erection, Procurement and Commissioning' (EPC) contract dated 11.12.2009 to M/s Essar Project India Ltd. (EPIL) for a lump-sum fixed price of Rs.3200 crores. The said contract included procurement, supply, erection, commissioning, testing of machinery and wrap up guarantee etc. The assessee also entered into a process technology license agreement with 'Saipem S.p.A', Italy, and 'Kellogg Brown & Root Inc.' USA. This project was supervised by 'M/s Project and Development India Ltd'. (PDIL). The project was funded by a consortium of Banks and Financial Institutions laid by 'IDBI' Bank. During the year under consideration said project was under construction and the commercial production started on 01.10.2017.

4.1 A search and survey action u/s 132/133A of the Income-tax Act, 1961 (in short 'the Act') were carried out in the case of the assessee on 10.05.2018 . Subsequently, a notice u/s 153A of the Act was issued on 13.02.2020. In response, the assessee filed return of income u/s 153A of the Act. The assessment proceedings u/s 153A was completed on 30.09.2021 after making various additions/disallowance. On further appeal, the Ld CIT(A) partly allowed the appeal of the assessee. Aggrieved, both the Revenue and assessee are in appeal raising grounds as reproduced as above.



4.2 The Ground No. 1 of the appeal of the Revenue relates to addition of interest income on margin money kept with Bank/Financial Institution, which was held by the Assessing Officer as taxable under the head ‘income from other sources’. The brief facts qua the issue in dispute are that the Assessing Officer observed following interest income/receipts:

<b>Particulars</b>	<b>Amount</b>	<b>Remarks</b>
Interest Income		
On account of Margin money which are under lien with bank in respect of guarantees and for the letter of credit	1,00,77,381	Treated by the assessee as directly related to the project of setting up plant and reduced from work in progress.
On account of short term deposit made from surplus idle funds	2,47,02,364	Treated as taxable by the assessee and offered under income from other sources
-On other Accounts	1,193	Taxable Treated as taxable by the assessee and offered under income from other sources
-On Income Tax Refund	1,44,984	Treated as taxable by the assessee and offered under income from other sources
	<b>3,49,25,922</b>	

4.3 On perusal of the above chart of interest income, it is evident that except an amount of Rs.1,00,77,381/-, balance amount has been offered by the assessee itself as taxable under the head ‘income from other sources’ whereas the sum of interest of Rs.1,00,77,381/-, has been adjusted by the assessee against the expenditure for capital work-in-progress and to that extent capital work-in-progress has been reduced. The assessee relied on the decision of the Hon’ble Supreme Court in the case of **CIT v. Bokaro Steel Ltd. (1999) 102 taxman 94 (SC)**, however, the Assessing Officer did not agree with the contention of the assessee and treated



this interest income of Rs.1,00,77,381/- as taxable under the head 'income from other sources'. On further appeal, the Ld. CIT(A) allowed relief to the assessee on merit observing as under:

*“4.3 The issue to be determined is the treatment of interest income of Rs. 1,00,77,381/-. While the appellant has reduced this amount from the Capital WIP, the AO has taxed it as "Income from Other Sources". It is noted that the total interest income received by the appellant during the year is Rs. 3,49,25,922/-. Out of this, the appellant has already offered a sum of Rs. 2,48,48,541/- as "Income from Other Sources" on the ground that such interest income has arisen out of short term deposits made from surplus idle funds. The balance amount of Rs. 1,00,77,381/- is reduced from the Capital WIP on the ground that such deposits are kept as margin money which are under lien with Bank in respect of guarantees and letter of credit for the purpose of setting up its plant. The plant has become operational in a later assessment year and not during the year under consideration.*

*4.3.1 In the case of CIT vs. Bokaro Steel Ltd. 236 ITR 315, the Hon'ble Apex Court held that "if the assessee receives any amounts which are inextricably linked with the process of setting up its plant and machinery, such receipts will go to reduce the cost of its assets". In the case of CIT vs. Karnal Co-operative Sugar Mills Ltd. 243 ITR 2, the Hon'ble Apex Court held that "the interest earned out of deposits to open a letter of credit for the purchase of the machinery required for setting up the plant was incidental to the acquisition of the assets and ruled in favour of the assessee". In view of the decision of the Hon'ble Apex Court, by respectfully following the same, this ground stands allowed.”*

4.4 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. We find that the Assessing Officer has rejected the contention of the assessee that interest income is derived from or attributed to the activity of the construction of the project and therefore same is eligible to be adjusted against the capital work-in-progress. But, we find that the Hon'ble Supreme Court in the case of Bokaro Steel Ltd. (supra) has held that when assessee receives any amount which is inextricably



linked to the process of construction of plant and machinery, such receipts goes to the root cause of asset, and thus eligible for adjusting against the expenses on capital work-in-progress. Same ratio has been followed in the case of **CIT v. Karnal Co-op. Sugar Mills Ltd. 243 ITR 2**. In the case in hand, it is undisputed that interest has been earned by the assessee on the margin money kept with the bank under lien in respect of guarantees and the letter of the credit availed from consortium of banks. The fact that interest has been earned and the margin money was kept for purpose of guarantees and letter of credit in relation to setting up of the project has not been disputed , thus, same being linked inextricably with setting up of the plant, interest is eligible for deduction against the cost of the asset or capital work-in-progress. In view of the settled principle laid down by the Hon'ble Supreme Court in the case of CIT v. Bokaro Steel Ltd. (supra), we do not find any infirmity in the order of the Ld. CIT(A) on the issue in dispute and we accordingly uphold the same.

4.4.1 We find that before the Ld. CIT(A) , the assessee challenged validity of making above addition on the principle that such addition could not be made in case of non-abated assessment, without aid of any incriminating material, however, the Ld. CIT(A) rejected the said contention of the assessee observing as under:

*“4.3.3 The appellant has also raised another contention that there was no incriminating material. The appellant has relied on various judicial precedents including All Cargo Global Logistics Ltd. (ITAT, Mumbai*



*Special Bench), Continental Warehousing Corpn. ITA No. 523 of 2013 and 1969 of 2013 dated 21.04.2015, Kabul Chawla, High Court of Delhi (2015) 93 CCH 0210 Del HC (2015) 281 CTR 0045 (Del): (2015) 126 DTR 0130 (Del): (2016) 380 ITR 0573 (Delhi): (2015) 234 Taxman 0300 (Delhi). In the case of Jitendra Virwani vs. DCIT [2021] 129 taxmann.com 38 (Bangalore Trib) dated 30.07.2021, the Hon'ble ITAT, Bangalore has held that assessment u/s. 153A can be made even if no incriminating material was found during search action. In this judgment, the above cited judgments of the appellant have actually been considered by the Hon'ble ITAT. Hence, it cannot be stated that the position of law is squarely in favour of the appellant. A similar issue of incriminating material came up before the Allahabad High Court in the case of PCIT vs. Siddharth Gupta in ITA No. 17 of 2022. In the said appeal, 2 questions of law were raised.*

*i. Whether assessment or re-assessment under section u/s. 153A of the Income Tax Act, 1961 can be framed only on the basis of incriminating material found during the course of search under section 132 of the Act.*

*". Whether assessment or re-assessment under section u/s. 153A of the Income Tax Act, 1961 can be framed where no incriminating material has been found in the search under section 132 of the Act.*

*Eventually, the Hon'ble High Court upheld the stand of the revenue and ruled that assessment can be framed even when no incriminating material has been found u/s. 132 of the Act. While doing so, the Hon'ble High Court considered a host of The judgment was rendered decisions including CIT vs. Kabul Chawla 380 ITR 573. on 04.07.2022. The appeal fled by the assessee before the Hon'ble Supreme Court as dismissed vide SLP (Civil) Diary No. 29742/2022 dated 12.12.2022. In view of the fact that the order of the Hon'ble Supreme Court is declaratory in nature, the decision of the Hon'ble Supreme Court would apply to this case as well. Accordingly, this part of the ground is dismissed."*

4.5 Before us, the assessee has challenged the finding of the Ld. CIT(A) by way of the additional ground which we have already admitted above. We find that the Hon'ble Supreme Court in the case of **PCIT vs Abhisar Buildwell P. Ltd. [Civil Appeal No. 6580 of 2021]** has upheld finding of the Hon'ble Bombay High Court in the case of CIT v. Continental Warehousing Corporation (supra) that no addition could be made in the case of the non-abated assessment years without aid of any incriminating material found during the course of the search. Thus, both the conditions that



*firstly*, assessment is unabated i.e. no assessment proceedings pending as on the date of the search and *secondly* no incriminating material found during the course of the search, are to be cumulatively fulfilled. When we examine the above ratio of the Hon'ble Jurisdictional High Court confirmed by the Hon'ble Supreme Court, we find that qua the issue in dispute, there is no reference of any incriminating material in the order of the Assessing Officer. The Ld. CIT(A) followed the decision of the Hon'ble Allahabad High Court in the case of Pr. CIT v. Sidhart Gupta (supra) but in view of the decision of the Hon'ble Supreme Court in the case of **Abhisar Buildwell P. Ltd.(supra)**, said ratio of the decision of the Hon'ble Allahabad High Court is no longer in operation and therefore, the finding of the Ld. CIT(A) on the issue in dispute is set aside .Thus, no addition qua the interest on margin money could have been made in the case of the assessee even on the legal principle. Thus, the additional ground of the assessee to this extent is allowed.

5. The next issue is regarding disallowance of Rs.1,29,32,54,291/- in respect of overvaluation of the capital goods imported by the assessee company, which were purchased from M/s Essar Project India Ltd (EPIL) as per offshore supply contract. The facts in brief qua the issue in dispute are that the assessee awarded an 'EPC' contract dated 11.12.2009 to M/s EPIL for a lump sum fixed price of Rs.3200 crores. Subsequently, in mid 2010



EPIL specifically requested assessee to split the above 'EPC' contract into three separate contracts, viz., Engineering and construction, onshore supply contract and offshore supply contract. The assessee contended that the split was done merely to enable 'EPIL' for proper implementation and execution over the scope of work of the EPC contract and the total scope and lump sum fixed price remained the same. The agreement for split of the EPC contract was entered into 29.07.2010, break up of which is as under:

*"Engineering and Procurement Contract (E & C) - Rs 635 Crore(g325-483 of Paperbook of A.Y. 2013-14)*

*Onshore Supply Contract - Rs 765 Crore (page no. 484-568 of Paperbook of A. Y. 2013-14)*

*Offshore Supply Contract - Rs 1800 Crore. (page no. 569-675 of Paperbook of A.Y. 2013-14)"*

5.1 For offshore supply of the capital goods, the assessee made contract for Rs.1800 Crores. The Assessing Officer in para 5.1 of the assessment order has noted that Directorate of Revenue Intelligence(DRI), Mumbai issued a show cause to Essar Group of Companies including M/s EPIL, regarding overvaluation of goods imported from M/s Glob Supplier (RFZE, UAE). It is to be noted that while performing offshore supply of capital goods to the assessee, the EPIL procured/imported goods from original equipment manufacturers through M/s Glob Supplier (FZE UAE). In view of the show cause notice issued by the DRI, the Assessing Officer also issued show cause notice to the assessee as why the



overvaluation done in import of capital goods should not be disallowed. The Assessing Officer also referred the statement of Shri Vijay Kumar Goel (Chartered Accountant and General Manager of assessee company), which was recorded on oath u/s 132(4) of the Act on 11.05.2018 during the course of the search and seizure proceedings in the case of the assessee at 'Panagarh Industrial Park'. In said statement Authorized Officer referred to the invoices issued by the original equipment manufacturers (OEM) Company and corresponding invoices issued by the M/s Glob Supplier, UAE to the assessee and brought to their notice the over-invoicing/overvaluation of the capital goods supplied to the assessee. In view of the show cause notice of the Directorate of Revenue Intelligence and statement of Shri Vijay Kumar Goel, the Assessing Officer held that amount of Rs.1,29,32,54,291/- as disallowable observing as under:

*“On careful verification of the above seized document and statement of Shri Vijay Kumar Goyal, it is clear that Shri Vijay Kumar Goyal has categorically explained that how an invoice of Sungjin Geotec Co Ltd, Korea with an original price of \$11,98,190/- with gross weight of 154,827 Kgs has been over valued at \$ 32,98,500/- through routing the invoice from Global Supplier(UAE) FZE to EPIL which in turn has billed the same to the assessee company at an overvalued valuation. Further, on perusal of bill of landing seized during the course of search action it is seen that the original supplier Sungjin Geotec Co Ltd, Korea has shipped this consignment directly to EPIL at Port Haldia/India. It is observed that Global Supplier (FZE), UAE has been used as a routing entity with the sole purpose to inflate the import invoices.*

*The above example given above of one consignment holds good for other remaining 92 other consignment also. Documentary evidences have revealed that goods of all the 93 consignments were shipped directly to India from OEM / actual suppliers and only invoice was routed through intermediary entity Global Supplies (UAE) FZE with the only purpose of inflation of invoice value.*



5.12. It is pertinent to mention here that a copy of show cause notice alongwith relied upon documents had already been supplied by DRI to the assessee company and on further request by the assessee the same were supplied once again to the assessee. The show cause notice has discussed in detail alongwith supporting documentary evidences how the over valuation of invoices with respect to Onshore Contract with EPIL has been done by the assessee via Global Supplies (UAE) FZE.

5.13. The assessee has failed to furnish satisfactory reply to business prudence and exigency prompted the Board of Directors to take a decision to route all capital goods through an agreement with EPIL despite the fact that goods were shipped directly to India from OEM / actual suppliers at an highly inflated import value. The reply given by the assessee is vague and without any supporting corroborative evidence. Further, it is also pertinent to mention here that the assessee company was in possession of invoices issued by foreign suppliers to Global Supplies (UAE) FZE and the invoices issued by Global Supplies (UAE) FZE to EPIL which clearly shows that Global Supplies (UAE) FZE is issuing inflated value invoices to EPIL which in turn has been used by the assessee company to inflate cost of its capital goods. DRI has calculated the extent of overvaluation of import invoices at 98.75% as per the show cause notice mentioned above. Thus, no prudent businessman would enter into such transactions having in his possession the invoice value of the OEM supplier.

5.14. Thus, on the basis of the above discussion and the reasons stated above it is clear that the assessee has booked invoices in which the cost of capital goods have been over valued and the same is liable to be disallowed u/s. 37(1) of the Act since the same is not incurred for the business purpose. Since, the assessee has capitalised these invoices to the CWIP, the same is required to be reduced by the amount of over valuation of capital goods AY wise. The working of the overvaluation of Imported Capital Goods for AY 2014-15 is as under:



SR. NO.	CUSTOMER HOUSE NO.	BILL OF ENTRY NO.	DATE	GLOBAL SUPPLIES (UAE) FZE (GSF) INVOICE NO./DATE	NAME OF ORIGINAL EQUIPMENT MANUFACTURER (OEM)/ ACTUAL SUPPLIER	EXTENT OF OVERVALUATION IN INR.	CORRESPONDING EPIL INVOICING DATE (OBTAINED FROM ANNEXURE -10 TO STATEMENT OF SHRI VIJAY KUMAR GOYAL)	CORRESPONDING AY
12	INCCU1	580393	23-01-2012	GS/EPIL-M/277/NOVEMBER/11-12 Dt. 22-11-2011	NUOVOPIGNONE SPA	369546452	24-04-2013	2014-15
18	INCCU1	589596	02-02-2012	G5/EPIL-M/299/DECEMBER/11-12 Dt. 17-12-2011	NUOVOPIGNONE SPA	19510396	30-05-2013	2014-15
21	INCCU1	590280	03-02-2012	G5/EPIL-M/290/DECEMBER/11-12 Dt. 06-12-2011	LA MECCANICA PADANA SRL	4020588	20-04-2013	2014-15
24	INCCU1	5928873	06-02-2012	GS/EPIL-M/258/NOVEMBER/11-12 Dt. 07-11-2011	AMECO S.A.	12428460	14-06-2013	2014-15
37	INCCU1	7003207	41064	GS/EPIL-M/30/MAY/12-13 Dt. 13-05-2012	GERAB NATIONAL ENTERPRISES	6661104	23-04-2013	2014-15
50	INCCU1	853502	20-11-2012	GS/EPIL-M/92/SEPT/12-13 Dt. 01-09-2012	ALLIED INTERNATIONAL SRL	3516427	02-04-2013	2014-15
54	INCCU1	8634158	30-11-2012	GS/EPIL-M/75/JULY/12-13 Dt. 25-07-2012	MITSUBISHI CORPORATION	487149307	19-04-2013	2014-15
58	INCCU1	8635150	30-11-2012	GS/EPIL-M/50/JUNE/12-13 Dt. 07-06-2012	NUOVOPIGNONE SPA	132833753	22-05-2013	2014-15
62	INCCU1	9189329	01-02-2013	GS/EPIL-M/165/JANUAR Y/12-13 Dt. 09-01-2013	CCI LTD	6792214	03-12-2013	2014-15
65	INCCU1	967519	25-03-2013	GS/EPIL-M/175/JANUAR Y/12-13 Dt. 31-01-2013	NUOVA FEMA SPA	1831	25-05-2013	2014-15
66	INCCU1	981062	09-04-2013	GS/EPIL-M/206/MARCH/ 12-	GERAB NATIONAL ENTERPRISES	118995	28-05-2013	2014-15



			13 DL 20-03-2013				
67	INCCU1	985744	15-04-2013	GS/EPIL - M/203/MARCH/12-13 DL 07-03-2013	ANTICO D'UNGO E CESARE SRL	22729	25-05-2013 2014-15
68	INCCU1	985816	15-04-2013	GS/EPIL - M/207/MARCH/12-13 DL 27-03-2013	VIM FRANCE	4790786	25-05-2013 2014-15
69	INCCU1	201637	02-05-2013	GS/EPIL - M/211/MARCH/12-13 DL 31-03-2013	CG LTD	4417988	29-05-2013 2014-15
70	INCCU1	213719	15-05-2013	GS/EPIL - M/001/APRIL/13-14 DL 08-04-2013	SCHUF VALVE TECHNOLOGY GMBH	8533257	25-05-2013 2014-15
71	INCCU1	221096	23-05-2013	GS/EPIL - M/208/MARCH/12-13 DL 28-03-2013	VELAN INC	65674114	24-06-2013 2014-15
72	INCCU1	239277	12-06-2013	GS/EPIL - M/006/MAY/13-14 DL 13-05-2013	METSO SINGAPORE PTE LTD.	852808	22-07-2013 2014-15
73	INCCU1	246705	19-06-2013	GS/EPIL - M/004/MAY/13-14 DL 06-05-2013	CCI VALVE TECHNOLOGY GMBH	689120	08-08-2013 2014-15
74	INCCU1	255787	28-06-2013	GS/EPIL - M/011/JUNE/13 14 DL 04-06-2013	UHDEHIGH PRESSURE TECHNOLOGIES GMBH	83530049	20-08-2013 2014-15
75	INCCU1	264253	08-07-2013	GS/EPIL - M/009/MAY/13-14 DL 30-05-2013	ZEECONC.	26189845	08-10-2013 2014-15
76	INCCU1	302211	19-08-2013	GS/EPIL - M/018/JULY/13-14 DL 15-07-2013	EVEREST VALVE COMPANY	714326	19-08-2013 2014-15
77	INCCU1	320617	06-09-2013	GS/EPIL - M/030/AUG/13-14 DL 01-08-2013	CHERO PIPING SPA	638560	06-09-2013 2014-15
78	INCCU1	332384	20-09-2013	GS/EPIL - M/034/AUG/13-14 DL 15-08-2013	DOUGLAS CHERO SPA	9445606	20-09-2013 2014-15
79	INCCU1	338322	26-09-2013	GS/EPIL -	LA MECCANICA	1168878	26-09-2013 2014-15



			2013	M/033/AUG/13-14 Dt. 12-08-2013	PADANASRL			
82	INCCU4	280835	25-07-2013	GS/EPIL- M/024/JULY/13-14 Dt. 18-07-2013	LA MECCANICA PADANA SRL	211746	25-07-2013	2014-15
84	INCCU4	302795	19-08-2013	GS/EPIL- M/020/JULY/13-14 Dt. 15-07-2013	ALLIED INTERNATIONAL SRL	6903900	19-08-2013	2014-15
85	INCCU4	302795	19-08-2013	GS/EPIL- M/019/JULY/13-14 Dt. 15-07-2013	BENTLEY NEVADA INC	36023200	31-03-2014	2014-15
86	INCCU4	365922	28-10-2013	GS/EPIL- M/42/JOCT/2013-14 Dt. 03-10-2013	BEST HIGH PRESSURE & DRILLING TECHNOLOGY GMBH	868050	28-10-2013	2014-15
					Total	1293254291		

5.15. Hence, an amount of Rs. 129,32,54,291/- is disallowed u/s. 37(1) of the Act and CWIP is reduced accordingly. Penalty proceedings u/s. 271(1)(C) of the Act is initiated separately for furnishing inaccurate particulars of income.”

5.2 On further appeal, the Ld. CIT(A) observed that contract was assigned to M/s EPIC with associated risk of installation and execution of the project and therefore despite the issue of the show cause notice by the DRI to M/s EPIC, the ld. CIT(A) justified payment of Rs. 1800 crores by the assessee to M/s EPIL for offshore supply contract of capital goods. The relevant finding of the Ld. CIT(A) is reproduced as under:

“5.3.5 Consequent to the above discussions, the only issue left to be decided is whether the action of the AO in reducing the sum of Rs. 129,32,54,291/- from the CWIP is right or not. The AO has made a very elaborate case of trade based money laundering, which according to him is supported by the findings of the DRI and also the material found during search. The issue to be decided by the undersigned falls in a very narrow compass of applicability of provisions of I.T. Act as regards over-



valuation, qua the appellant. In this respect, I find that certain facts brought out by the appellant are very relevant.

a. The appellant has entered into a fixed lumpsum price Engineering Procurement and Construction (EPC) contract dated 11.12.2009 with EPIL for Rs. 3200 crs. to set up ammonia and urea complex at Panagarh, Wesh Bengal. There have been subsequent modifications in the contract as well. It is seen that the contract is split into 3 parts and the agreement for the same was entered into 29.07.2010 at agreed lumpsum price which are as under:-

Engineering and Procurement Contract (E&C) - Rs. 635 cr.

Onshore Supply Contract - Rs. 765 cr.

Offshore Supply Contract - Rs. 1800 cr.

b. According to the appellant, the contract price of Rs. 3200 crs. is based on the fixed lumpsum contract without any provision for price escalation except as expressly provided in the contract. This is noted from Clause 14.1 of the contract dated 11.12.2009 which reads as follows :-

*"Unless otherwise stated in the Contract The Contract Price shall constitute a lumpsum fixed price and will not be adjusted save as expressly provided in the contract, and includes any and all direct indirect and ancillary costs of whatsoever nature, including all profit, all license, royalty and other fees, taxes including all deductions and withholdings, but not including indirect taxes in India, Insurance premiums, license fees and other charges, whether directly or indirectly relating to or arising out of the supply and in accordance with this contract"*

These facts have been placed by the appellant before the AO during the assessment proceedings as well. Thus, this is not a case whether the appellant has negotiated the price on itemwise basis. Thus, there is merit in the claim of the appellant that it has substantially transferred the risks associated with the installation of the plant to EPIL, due to the contract price being frozen.

5.3.6 Another significant aspect is that the appellant has pointed out that Project and Development India Ltd., a PSU of the Government of India, has in its report of Nov., 2009 estimated the capital cost of the project around 5010.73 crs. They have estimated the Engineering Procurement Construction (EPC) out of the above at Rs. 3948 crs. including taxes and duties. The lender of the appellant, IDBI Bank has approved the total project cost of Rs. 4894 crs. in April, 2010. This being the case, the EPC contract of Rs. 3200 crs. executed by the appellant (subsumed in Rs. 4894 crs.) cannot be stated to be totally arbitrary. While there may be truth in the findings of the DRI, the reality remains that the appellant has entered into a fixed price contract which insulates itself from the risks



*associated with the execution of the project. Thus, only on this ground alone, the appellant is entitled to succeed.*

*5.3.7 It is also noted that DRI has issued show-cause to various entities including EPGL, EPMPL, EOL and EPIL but the appellant is not named among them (Para 5.1 of the assessment order). To sum up, Ground No. 2 is treated as allowed although some of the sub-grounds stand rejected, as discussed above.”*

5.3 Before us, the Ld. DR submitted that in view of the show cause notice issued by the Directorate of Revenue Intelligence to M/s EPIC regarding overvaluation of the purchase of the capital goods, it was evident that assessee had paid value in excess to the actual price of those goods and the assessee failed to explain payment of such excess price , therefore, the Assessing Officer is justified in making disallowance of excess overvalued part of the capital goods and accordingly, the action of the reducing of capital work-in-progress of the assessee by the Assessing Officer is justified. On the contrary, the Ld. Counsel for the assessee submitted that entire project of installation and supply for the project was duly supervised by M/s PDIL, which is Government of India Undertaking and due intelligence was undertaken by Tata Consulting Engineers Ltd (TCEL), which was appointed by the lenders. It was submitted that in the report prepared by both these experts, overall project cost had been compared with like projects which were proposed to be set up and it emerged from those reports that project cost of the assessee was lowest in peer comparison. Further, the Ld. Counsel submitted that the Assessing Officer failed to appreciate that the assessee had placed a fixed price rupees



contract on EPIC for overseas supply component, as such the assessee was immune from fluctuation in foreign currency and therefore the assessee had no reason to question the value of invoices raised by the EPIL, based on which the assessee had filed bill of entry. Further, the Ld. Counsel for the assessee submitted that the disallowance was made merely on the basis of the quantification made in the show cause notice issued on 11.03.2015 by the Department of Revenue Intelligence, Mumbai on M/s EPIL and other associated companies for alleged overvaluation of import from M/s Glob Supply (FZE UAE). The Ld. Counsel brought to our notice that said show-cause notice issued by the DRI has been dropped vide order dated 18.05.2023 of Principal Commissioner of Customs Adjudication, Mumbai. The Ld. Counsel submitted that show-cause notice itself has been dropped, then, the very basis of the Assessing Officer for alleged calculation also fails. Regarding the statement of Shri Vijay Kumar Goel, the Ld. Counsel submitted that he had only provided details of the import invoice raised by EPIL for delivery of capital goods under the EPC contract and no where stated of any over-invoicing in import of goods.

5.4 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. As far as allegation of the overvaluation in import of capital goods is concerned, we find that assessee has paid consideration to M/s EPIL according to the terms of the contract for lump sum supply



and installation of the project. In the entire process, the assessee was immune from escalation of project price on account of foreign currency fluctuation or delay in project execution. Therefore, the assessee was not concerned about the price at which the EPIL further purchased those goods, merely for the reason that associated company of EPIL i.e. M/s Glob Supplier, UAE had purchased those goods from OEM suppliers at lower prices, therefore, the assessee cannot be burdened with the charges of overvaluation in purchase of the capital goods. We further note that the very basis of the addition i.e. show-cause notice of the Directorate of Revenue Intelligence itself has been canceled by adjudicating authority. The Ld. Counsel for the assessee filed a copy of the detailed order dated 18.05.2023 issued by the Principal Commissioner Customs Adjudication, Mumbai. The relevant part of the said order is reproduced as under:

*“5.12.4 As per the law laid down by above judgments, the goods which are neither prohibited nor have any duty implications cannot be confiscated under Section 111(m) of Customs Act, 1962 for mis declaration of value. In the present case I find that goods are not prohibited goods and as such are not liable for confiscation u/s 111(d) of Customs Act, 1962. There is also no dispute about these goods being eligible for project import at nil rate of duty, thus having no implication of duty in respect of mis declaration of value, if any. Therefore, I find that the impugned goods are not liable for confiscation under Section 111(d) and 111(m) of Customs Act, 1962. Since goods are held not liable for confiscation, the penalty u/s 112 (a) or 112 (b) of Customs Act, 1962 is not being imposed. There is a proposal in SCN for imposition of penalty u/s 114 AA of the Customs Act, 1962. I find that the SCN, in para 29.5, has stated that since invoices have been manipulated for purpose of over valuation and false and incorrect declaration/ statements have been made in the import document, penalty u/s 114 AA is imposable. However, as stated earlier, the charges of over invoicing of import goods have been held as not maintainable, there is*



*no false or incorrect declaration in the import documentation and therefore, no penalty is imposable u/s 114 AA on the importer notices.”*

5.4.1 Since, the very basis of the making addition of overvaluation in purchase of capital goods has been cancelled; the addition made in the hands of the assessee on that very same basis cannot be sustained. Accordingly, we uphold the finding of the Ld. CIT(A) on the issue in dispute. The relevant grounds of the appeal of the Revenue are accordingly dismissed.

6. The next issue is regarding disallowance of interest of Rs.86,89,98,214/- calculated @ 12% on the funds borrowed for utilisation in alleged overvaluation of imported capital goods of Rs.1,29,32,54,291/-. The Assessing Officer calculated interest on the inflated consideration paid towards overvaluation of imported capital goods, applying the interest rate @ 12% and computed the said interest to Rs.87,89,98,214/-. This amount has been disallowed out of interest expenses included by the assessee under the capital work-in-progress. The Ld. CIT(A) deleted the disallowance on the ground that when the disallowance corresponding to overvaluation of the imported capital goods amounting to Rs.1,29,32,54,291/- itself was deleted, therefore such disallowance of interest could not be sustained.

6.1 We find that we have also upheld the deletion of disallowance by the Ld. CIT(A) for the addition of overvaluation of the imported capital goods and therefore, we do not find any infirmity in the



order of the Ld. CIT(A) on the issue in dispute and accordingly we uphold the same. The relevant ground of the appeal of the Revenue is accordingly dismissed.

7. We find that the assessee has challenged the addition in respect of overvaluation of the imported capital goods of Rs.1,29,32,54,291/- and consequent interest disallowance of Rs.87,89,98,214/- on legality of making additions on the ground that no incriminating materials/documents were found during the course of the search qua the issue of overvaluation of the imported capital goods and the addition was made merely on the basis of the show-cause notice issued by the Department of Revenue Intelligence, Mumbai.

7.1 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. It is undisputed that there is no reference of any seized material relevant to the issue in dispute of over valuation of imported capital goods and only basis of the addition i.e. the show cause notice issued by the DRI, was not unearthed during the search action at the premises of the assessee, therefore, following our finding in preceding paragraphs, we are of the opinion that in absence of any incriminating material no addition/disallowance could be made in completed assessments i.e. unabated assessments . Thus, the addition of the overvaluation of the imported capital goods and the



corresponding interest are also liable to be deleted. The corresponding/additional grounds of the appeal of the assessee are accordingly allowed.

8. The next issue is in respect of disallowance u/s 37(1) of the Act at Rs.70,77,37,047/- by the Assessing Officer on the ground that the assessee has recorded excess expenses in the books of accounts in context with onshore supply contract with EPIL.

8.1 The brief fact qua the issue in dispute are that in post search inquiry the assessee submitted that entire turnkey project of manufacturing of 'Ammonia' and 'Urea' was split into three sub-contracts as under:

Offshore Supply Contract	Rs. 1800 Crores	Dated 29.07.2010
Onshore Supply Contract	Rs. 765 Crores	Dated 20.08.2010
E&C Contract	Rs. 635 Crores	Dated 29.07.2010

8.2 Further, the Assessing Officer perused the seized material found from the premises located at B-Wing, 5<sup>th</sup> floor, Poonam Chambers, Dr. Annie Besat Road, Worli, Mumbai (page No. 67 to 86), which included a letter written by Shri Prasant (EPIL) to Shri Nishant Kanodia (i.e. director of assessee company) dated 07.02.2017, wherein the actual expenditure incurred on the three contract differed from the original contract value. After taking into consideration submissions of the assessee, the Assessing Officer found that in case of onshore supply excess expenditure of Rs.70,77,37,045/- was booked by the assessee which being in



excess to the lump sum contract price of Rs.765 crores agreed and therefore same was disallowable u/s 37(1) of the Act. The relevant finding of the Assessing Officer is reproduced as under:

*“6.15. The above reply of the assessee has been carefully considered but the same is not found acceptable.*

*On comparison of actual cost capitalized as WIP by MCL under different supply contracts and agreement value, the following points emerges:*

<i>Details of Expenditure</i>	<i>Contracted Price (as per Agreement)</i>	<i>Actual cost booked by MFCL under different supply contract</i>
<i>Engineering &amp; Construction Expenditure</i>	<i>635 crores</i>	<i>623.80 crores</i>
<i>Onshore supply</i>	<i>765 crores</i>	<i>838.00 crores</i>
<i>Offshore supply</i>	<i>1800 crores</i>	<i>1557.19 crores</i>
<i>Total</i>	<i>3200 crores</i>	<i>3018.99 crores</i>

*Now, With respect to E&C expenses the assessee has capitalized total cost of Rs.623.80 Crores in Capital WIP which is found to be within the limit of lump sum contract. Similarly with respect to Offshore procurement, the agreement is for Rs. 1800 Crores and the assessee has capitalized total cost of Rs. 1557.19 Crores in Capital WIP which is found to be within the limit of lump sum contract.*

*Now with respect to Onshore Expenses contract, the contract price is of Rs. 765 Crores only. However, the details of cost break up shows that the assessee has capitalized total cost of Rs. 838.86 Crores in Capital WIP till AY 2015-16 which is in excess of individual 'lumpsum' contract value of Rs. 7,65,00,00,000/- signed for onshore supply. Under a lump sum contract a figure lump sum' price for all the works is agreed at the onset. It means the contractor had to complete the work or supply the materials at price decided earlier in the contract. Therefore, the assessee is eligible to claim only Rs. 7,65,00,00,000/- under this head as per the lumpsum contract dated 20.08.2010. The assessee's explanation that splitting of contract into 3 parts is merely to enable EPIL for proper implementation and execution of overall scope of work does not hold water as the total contract value has been specifically split up into 3 parts by assigning separate specific values for each component of the contract. If the splitting of the original contract was only for the convenience purpose there was no need to assign spate values to each component to the*



original contract in a case where total contract value is already assigned in original agreement. Further, it is also pertinent to mention here that in none of these agreements it is mentioned that the contract value between these agreements can be adjusted within the original contract value of Rs. 3200 crores. Further, the contention of the assessee that these 3 agreements are irrelevant for the assessee company is not valid because through these agreements specific separate value has been assigned to the three portion of the actual agreement.

6.16. Therefore, the differential amount of Rs. 73,86,35,024/- is excess booked which is liable to disallowed in the year in which the expense amount crosses the limit of Rs. 7,65,00,00,000/-. For the sake of clarity, break up of year wise disallowance to be made as under:

<b>Onshore</b>					
AY	Basic (A)	Cumulative Basic (B)	Agreement Limit (C)	Variation with Agreement (B)-(C)	Amount of Disallowance to be made in each year
2012-13	2,14,11,92,219	2,14,11,92,219	7,65,00,00,000	(-) 5,50,88,07,781	Nil
2013-14	4,75,39,12,253	6,89,51,04,472	7,65,00,00,000	(-) 75,48,95,528	Nil
2014-15	1,46,26,32,573	8,35,77,37,045	7,65,00,00,000	70,77,37,045	70,77,37,045
2015-16	3,08,97,979	8,38,86,35,024	7,65,00,00,000	73,86,35,024	3,08,97,979

6.17. Therefore, an amount of Rs. 70,77,37,045/- is disallowed u/s. 37(1) of the Act as excess expense booked which is not in conformity with the Onshore Agreement dated 20.08.2010 and hence which is not used for the business purpose and CWIP is reduced accordingly. Penalty u/s. 271(1)(c) of the Act is initiated separately for furnishing inaccurate particulars of income.

(Reduction of CWIP by Rs. 70,77,37,045/-)"

8.3 On further appeal, the Ld. CIT(A) upheld the disallowance observing as under:

"7.3.4 It is the appellant's contention that there is no over-valuation of Panagarh project. It is a fact that the appellant has vide submissions dated 04.02.2021 before the AO contended that the EPC contract is on the basis of lumpsum fixed price for Rs. 3200 crs with 3 distinct components. Vide letter dated 06.03.2023, the appellant has submitted that on 11.06.2012 there were certain



*changes in the sourcing of the goods of the project as a result of which the value of goods being procured indigenously will be significantly higher than what was originally envisaged. The appellant has submitted that there was enhancement of on-shore supply contract from Rs. 765 crs. to Rs. 865 crs. on 11.06.2012. The appellant has submitted that EPIL exited before the completion of the project and therefore the project was incomplete and cost required to be incurred by EPIL have now been incurred by Matix to complete the project. The appellant has also relied on the statement of Shri Rakesh Patwa (employee of appellant) recorded u/s. 132(4) of the Act on 12.05.2018 to buttress its claim. The appellant has also referred to a certification by Chartered Engineer vide letter dated 08.05.2018. I am afraid, I am unable to entertain these submissions of the appellant. Such findings/submissions do not emanate from the assessment order and it is not known whether all these evidences and records were placed by the appellant before the AO. The appellant has repeatedly harped (including in the letter dated 11.01.2023) that the contract of Rs. 3200 crs. was a lumpsum fixed price contract. Under the circumstances, in my view, the excess expenditure claimed to be incurred by the appellant over and above the contracted price of Rs. 765 crs. towards Onshore supply (within the overall cost price of Rs. 3200 crs.) cannot be allowed. Hence, the AO's action of reduction of CWIP by Rs. 70,77,37,045/- stands upheld.”*

8.4 Before us, the Ld. Counsel for the assessee submitted that Assessee Company was liable for fixed lump sum contract price of Rs. 3200 crores without any provision for price escalation and same was expressly provided in contract and EPC contract was split into three parts only for identification and execution of the relevant work. The Ld. Counsel submitted that the Assessing Officer failed to understand the nature of the transaction entered into between the assessee and EPIL. Each details/justification/explanation had been provided by the assessee company that three separate agreements have been agreed and entered into with EPIL on the specific request of the EPIL. The said agreement agreed and entered into with EPIL



on specific request of EPIL, for smooth functioning and completion of project within the due course of time. The Ld. Counsel for the assessee submitted that in one part price incurred was lower, but in other part price slightly increased then the stipulated, however the entire expenditure on the project had not exceeded then the agreed contract value of Rs.3200 crores. The Ld. Counsel submitted that the Ld. CIT(A) allowed relief on the issue of offshore capital goods on same contention, however failed to appreciate those very facts and rejected the grounds with cryptic reasons without assigning any proper reasons. The Ld. Counsel submitted that the entire document by and between the parties has to be understood as held in the case of **Bishwannath P Singh v. Rajendra Prasad (2006) 4 SCC 432**. The Ld. Counsel also referred to the decision of the Hon'ble Supreme Court in the case of **Shahzada Nand and Sons v. CIT [1977] 108 ITR 358 (SC)** and submitted that *the Department cannot sit in arm chair of businessmen and decide how he should have entered in the contract*. The Ld. Counsel also relied on the decision of the Hon'ble Gujarat High Court in the case of **Margabhai Kisanbhai Patel & Co. v. CIT (1977) 108 ITR 54**, wherein it is held that *"unless the transaction is proved as sham or not bona fide, it is not open to the tax authorities to disregard figures of transaction shown in the assessee's books of accounts"*.

8.5 On the other hand, the Ld. DR relied on the order of the lower authorities.



8.6 We have heard rival submission of the parties and perused the relevant material on record. The issue in dispute is in respect of alleged excess expenditure booked by the assessee in its books of account in respect of onshore supply of part of the project. The entire project has been bifurcated by the EPIL in three parts, the first part is of engineering and construction, second part is of onshore supply and third part is offshore supply. In the case of engineering and construction and offshore supply the expenditure booked by the assessee is lower than contract price, however in case of the onshore supply the actual cost booked by the assessee in its books of account is of Rs.832 crores as compared to Rs.765 crores agreed between the parties. The contention of the assessee is that the total turnkey project price was Rs.3200 crores whereas assessee has booked in books of account only Rs3018.99 crores, which is lower than the overall contract price. According to the Assessing Officer the assessee agreed for contract price of Rs.765 crores for onshore supply of lump sum basis and therefore, the excess price paid by the assessee cannot be allowed. We are of the opinion that the Assessing Officer has not held the excess payment of Rs.70.77 crores paid by the assessee as non-genuine. If the assessee has actually paid the amount though it may be slightly more than the contracted price but if it is incurred wholly and exclusively for the purpose of the assessee, then merely for the reason that amount finally incurred has increased as compared to



contracted price, the Assessing Officer has no right to discard or ignore the excess price paid. It is for the assessee to decide whether it was required for the installation of the plant or for the purpose of the business and the Assessing Officer cannot decide what amount the assessee should pay to the EPC contractor. In view of the above decisions relied upon by the assessee, we are of the opinion that such disallowance made by the Assessing Officer and sustained by the Ld. CIT(A) is not justified. Accordingly, we set aside the finding of the Ld. CIT(A) and direct the Assessing Officer to delete said addition. This ground of the appeal of the assessee is accordingly allowed.

9. The next ground is in respect of disallowance of interest of Rs.4,06,50,338/- computed @ 12% on the funds borrowed for excess amount paid towards on-shore supply of Project. Since, we have already deleted the disallowance of sum of Rs.70,77,37,045/- therefore, the consequent interest disallowance cannot survive. Accordingly, the same is directed to be deleted. The ground of appeal of the assessee is accordingly allowed.

10. The assessee has challenged disallowance of these two amounts also on the ground of no incriminating material, but since we have already allowed the addition on merit in the case of the assessee wherein adjudicating upon this legal ground of the



assessee is only academic, hence we are not adjudicating upon same.

10.1 The identical grounds/additional grounds have been raised in other years either by the Revenue or by the assessee except, one ground of the addition of compensation received of Rs.240 crores from M/s Essar Oil Ltd. , which has been treated as business income by the AO, therefore, the balance grounds raised in other years are accordingly adjudicated *mutatis mutandis*.

11. As far as ground related to addition of compensation received of Rs.240 crores from M/s Essar Oil Ltd. raised in appeal of Revenue for AY 2016-17, which has been held by the Assessing Officer as business income, is concerned, we find that the assessee set up a gas based urea plant in 'Panagarh', West Bengal, under an EPC contract entered into with M/s Essar Project India Ltd. (EPIL). The scheduled commission date of the project was 1<sup>st</sup> April, 2014. During pre-commissioning and commissioning activity, power was derived from 'Gas Turbine Generators' which consume natural/methane for testing of equipments like chemical cleaning of boilers, steam blowing of steam headers, cooling water flushing , lube oil flushing of rotary machines etc. As per the terms of the contract of project, it was the responsibility of the Essar India Project Ltd. to arrange for methane gas from M/s Essar Oil Ltd. The assessee had entered into GSPA agreement dated 11.12.2009 with



EOL for long term supply of coal methane gas for a period of 20 years. According to the assessee, the plant was ready for commissioning as per lender's stipulated time for scheduled Commercial Operation Date (SCOD) of 1<sup>st</sup> April, 2014 for the Fertilizer Plant but the EOL failed to supply the requisite amount of coal based methane (CBM) gas to the plant of assessee, therefore the assessee was unable to carry out the plant's pre-commissioning and commissioning activity. The gas is the basic material and there was a delay on the part of EOL, thus the production could not be undertaken. This failure on the part of the EOL, not any delayed commissioning but also increased the cost of the project. The negotiation with respect to fixed cost reimbursement took place between IDBI Bank, EOL and the assessee and in August, 2014 EOL finally agreed to pay the assessee, expenses of Rs.240 crores, which has been held by the Assessing Officer as Revenue receipt of the assessee, whereas according to the assessee this was receipt in the nature of the capital and therefore, assessee is eligible for set off of the same against the capital work-in-progress. The Ld. Assessing Officer disallowed this claim of the assessee observing as under:

*"4.4.4. Thus, the claim of the assessee that the compensation received is capital receipt is found to be not tenable in law as per facts of the case. The reliance of the assessee on various case laws is also found to be not valid as the facts of the present case are different from the case laws relied upon by the assessee.*

*4.5 It is well settled law that the word "income" has a very wide amplitude and it should be construed in its general and natural meaning i.e. a thing that comes in. In the case of assessee, a definite receipt in the form of compensation has come in the hands of the*



assessee and is accordingly, taxable as income being a revenue receipts.

2(24) "income" includes-

(vd) the value of any benefit or perquisite taxable under clause (iv) of section 28;

4.6. Further, the provision of section 28(iv) are residuary in nature and provides that if any benefit or perquisite arises from business or the exercise of a profession by the assessee, the same is chargeable to tax under the head of Profits and gains of business or profession. In this connection, provisions of section 28(iv) are reproduced hereunder:

"28. The following income shall be chargeable to income-tax under the head "Profits and gains of business or profession",—

(iv) the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession;"

4.7. It is now well-settled that in order to decide whether or not a payment is revenue receipt its true nature and substance must be looked into. The form in which it is expressed is not decisive. How the assessee treated the payment is not conclusive of its nature. If the assessee himself has treated the payment in his account books as compensation or consideration received for loss of earnings or profits, it is revenue receipt. If the payment is received in the ordinary course of the business of the assessee for loss of stock-in-trade, it is revenue receipt. If, on the other hand, the payment received is towards compensation for extinction or sterilisation partly or fully of a profit-earning source (capital asset), such receipt not being in the ordinary course of the assessee's business, it must be construed as capital receipt. Any sum received in substitution of income is revenue receipt. It was held that damages received are the compensation for the profits which were to be earned.

4.8. Now in the instant case as already observed, compensation has been paid for non-supply or short supply of CBM which is the main raw material for the production of Ammonia- Urea. Thus, the compensation is directly linked to the Revenue generating activity of the assessee and it has to be treated as Revenue Receipt.

4.9. Assessee being a company has to compulsory follow mercantile system of accounting. As per the fifth Amendment to SPA between EOL and MFCL on 01.09.2015, compensation of Rs. 240 crores has accrued to the assessee for the period 01.04.2015 to 30.09.2015 pertaining to AY 2016-17 which is taxable as business income and the assessee has not offered to tax during the assessment year 2016-17."



11.1 On further appeal, the Ld. CIT(A) however deleted the addition holding the same to be capital cost of the plant. The relevant finding of the Ld. CIT(A) is reproduced as under:

*“7.3.2 The appellant has reduced the entire compensation of Rs. 240 crs. From IS CHIP in A.Y. 2017-18. However, the entire compensation that this compensation is revenue in nature and is liable to be taxed as such in the year under consideration. A perusal of the P&L Ac. of the appellant for the year shows that there is no income from Operations. Only other income of Rs. 1,28,82,481/- has been included in the PaL Ac. Similarly, it is seen that the WIP as on 31.03.2016 is stated to be Rs. 56,42,52,35,329/-. A perusal of the P&L A/c. of F.Y. 2016-17 also shows that no revenue from operations was booked during the year. It is only in F.Y. 2017-18 that revenue from operations of Rs. 592.7 lakhs has been booked as income. Further, Note No. 1 to Financial Statement of that year states that "the company had commissioned its plant on 01.10.2017 and has started commercial production". Also seen that the WIP and related pre-operative expenses have been shifted to fixed assets schedule during the year. Note 3A of the audited Financial Statement shows that a sum of Rs. 6319.32 crs. has been transferred/capitalized*

*7.3.3 In the light of the above, I am of the view that the claim of the appellant that non-availability of Coal Bed Methane Gas as per the GSPA agreement resulted in the delayed commissioning of the plant, which eventually happened in 2017 does have merit. This is not a case where after the commissioning has been done, the supply of gas has been disrupted. In such a scenario, such compensation could be termed to be revenue in nature. However, in the scenario of the appellant where the commissioning itself was delayed, the view could be formed that such compensation is related to the capital cost of the plant.*

*7.3.4 It is also noted that the appellant has reduced such compensation from the CWIP, effectively reducing future depreciation claims. This, it cannot be said that the receipts are not being taxed at all.*

*7.3.5 In view of the above, considering the specific facts of this case, the addition made by the AO by treating the compensation as "Business Income" stands deleted. However, such income shall indeed be reduced from CWIP and the enhanced depreciation granted, if any, shall stand withdrawn, so that there is no double benefit to the appellant. In view of this specific finding, other averments of the AO or that of the appellant are not required to be adjudicated.”*



11.2 We have heard rival submission of the parties and perused the relevant material on record. The dispute is in respect of the character of compensation received from the EOL for failure in supplying Methane Gas for commissioning and dry run of the project. It is undisputed that the compensation has been paid by the EOL to the assessee for the reason of non-supply of the quantity of the methane gas to the assessee for its dry run of the project and due to which the project cost of the assessee has gone up and therefore, the EOL agreed to pay compensation of Rs.240 crores to the assessee. The issue-in-dispute is in relation to nature of the compensation whether it is in the character of the revenue or in the capital. We find that the compensation paid mainly for the reason that the dry run of the project could not carried out which is part of the activity in the capital nature and therefore the compensation received also acquired the nature of the capital and eligible for adjustment against the capital work-in-progress. The Assessing Officer has made addition on substantive basis in the assessment year 2016-17 and on protective basis in assessment year 2017-18, for the reason that assessee has shown commissioning of the plant in that assessment year. In our opinion the Ld. CIT(A) has correctly characterized the compensation received by the assessee as in the nature of the capital and we do not find any infirmity in the order of the Ld. CIT(A) on the issue in dispute . Accordingly, we uphold the



same. The relevant ground of appeal of the Revenue is accordingly dismissed.

12. The Next issue is in respect of disallowance of the interest of overvalued on-shore capital goods. The assessee has challenged this addition on the ground of no incriminating material found qua the issue in dispute. Since, we have already deleted the addition on merit, we are not required to adjudicate upon the additional ground challenging the addition on the legality.

12.1 As far as the issue of depreciation on reduction in work-in-progress post capitalization raised in the appeal of Revenue and of the appeal of assessee for AY 2018-19 and 2019-20, is concerned, same is consequential to the addition of overvaluation in import of capital goods, which we have already deleted, thus this ground is also decided against the Revenue.

13. In the result, the appeals of the Revenue for assessment year 2013-14 to 2019-2020 are dismissed whereas appeals of the assessee for assessment year 2013-14 to 2019-2020 and cross-objection are allowed.

**Order pronounced in the open Court on 18/01/2024.**

**Sd/-**  
**(SANDEEP SINGH KARHAIL)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

Mumbai;  
Dated: 18/01/2024



Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)  
**ITAT, Mumbai**