

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, KOLKATA**  
**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER**  
**AND**  
**SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No.873/KOL/2024**

(निर्धारण वर्ष /Assessment Year : 2014-2015)

<b>Shyam Metalics and Energy Ltd</b> 83 Trinity Tower, 7 <sup>th</sup> Floor, Topsia Road, Topsia, Kolkata-700046	Vs	<b>ACIT, Central Circle-1(1), Kolkata</b>
<b>PAN No. :AAHCS 5842 A</b>		

**ITA No.1016 & 1017/KOL/2024**

(निर्धारण वर्ष /Assessment Year : 2017-2018 & 2018-2019)

<b>Shyam Metalics and Energy Ltd</b> 83 Trinity Tower, 7 <sup>th</sup> Floor, Topsia Road, Topsia, Kolkata-700046	Vs	<b>ACIT, Central Circle-1(1), Kolkata</b>
<b>PAN No. :AAHCS 5842 A</b>		

**ITA No.1018 - 1020/KOL/2024**

(निर्धारण वर्ष /Assessment Year : 2017-2018 to 2019-2020)

<b>Shyam Sel and Power Limited</b> 5, SS Chamber, 2 <sup>nd</sup> Floor, Pincep Street, C.R.Avenue, Kolkata-700072	Vs	<b>ACIT, Central Circle-1(1), Kolkata</b>
<b>PAN No. :AAECS 9421 J</b>		

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri A.K. Tulsiyan, FCA & Robin Maheshwari, ACA
राजस्व की ओर से /Revenue by	:	Shri Raja Sengupta, CIT-DR
सुनवाई की तारीख / <b>Date of Hearing</b>	:	13/08/2025
घोषणा की तारीख/ <b>Date of Pronouncement</b>	:	13/08/2025

**आदेश / ORDER**

**Per George Mathan, JM:**

These are the appeals filed by the two different assesseees against the separate orders passed by the Id. Pr.CIT(Central), Kolkata-1, dated 07.03.2024, 14.03.2024 & 18.03.2024, respectively for the assessment years 2014-2015, 2017-2018, 2018-2019 & 2019-2020, respectively.

2. Shri A.K.Tulsiyan with Shri Robin Maheshwari, Id.AR appeared on behalf of the assessee and Shri Raja Sengupta, Id.CIT-DR appeared on behalf of the revenue.

3. Ld. AR argued first in its appeal for A.Y.2014-2015 in **ITA No.873/Kol/2024**, therefore, this appeal is decided first.

4. It was submitted by the Id. AR that the Id. Pr.CIT has invoked his powers u/s.263 of the Act in respect of an assessment order passed u/s.153A r.w.s.143(3) of the Act, dated 19.07.2021. It was the submission that originally the return filed by the assessee for the impugned assessment year came to be processed u/s.143(3) of the Act on 28.12.2017. Subsequently there was a search and seizure action conducted against the assessee on 17.01.2019 and in consequence of the search the assessment came to be completed u/s.153A r.w.s. 143(3) of the Act on 19.07.2021. It was the submission that in the assessment u/s.153A r.w.s.143(3) of the Act dated 19.07.2021, the issue of the carbon credit, as to whether the same is treated as revenue receipt or capital receipt was admittedly not considered by the AO. It was the submission that in the said assessment order, the AO had considered only the money received from certain companies towards share capital to an extent of Rs.1,85,60,000/- which was treated as the unexplained cash credit as also certain disallowance of deduction u/s.80IA of the Act and disallowance of trading loss. It was the submission that hard disk bearing id No.SME/HD/1 and SME/HD/2 was considered as incriminating material. It was the submission that at the outset in the proceedings u/s.263 of the Act the Id. Pr.CIT had taken a stand that the

assessee had shown the income from sale of carbon credits as revenue from operations but in the computations had reduced the same and had treated the same as capital receipt. It was the submission that before the Id. CIT(A) it was submitted that the issue of carbon credit was not an issue which could be considered in an assessment u/s.153A of the Act but the Id. Pr.CIT in page 3 para 6.iii had held that as incriminating material in the form of SME/HD/1 and SME/HD/2 was considered in the course of assessment the decision in the case of Abhisar Buildwell Pvt. Ltd. would apply. It was the submission that the Id. CIT(A) in respect of appeal filed by the assessee against the assessment order passed u/s.153A r.w.s.143(3) of the Act on 19.07.2021 has in page 32 has held that the said documents namely SME/HD/1 and SME/HD/2 were part of the regular books of accounts of the amalgamated company and that no incriminating documents have been found. The findings of the Id. CIT(A) reads as follows:-

*As mentioned above, no incriminating documents have been found during search against the assessee relevant to this particular assessment year. Also after going through the facts of the case, the alleged seized documents namely SME/HD/1 and SME/HD/2 relates to purchases, which are very much part of regular books of accounts of the amalgamated company. The said sales/purchases were made in the normal course of business of the amalgamated company. In the current case, additions (disallowances) have been made on the basis of information available in the Audit Report/Return of Income or on the basis of information gathered during post search enquiries. Hence, respectfully following the judgments/decisions of various High Courts and the Tribunals, including those of the jurisdictional High Court and ITAT and the judgement of the Hon'ble Supreme Court in PCIT, Central-3 vs. Abhisar Buildwell Pvt. Ltd., Civil Appeal No.6580 of 2021, order dated 24-04-2023, it is held that the disallowances/additions made are not sustainable.*

*In view of the facts narrated and the discussion above the disallowances/additions made by the AO vide order u/s. 153A read with section 143(3) in this particular assessment year are not sustainable, as these are not linked to any incriminating material*

*found at the time of search. Hence, addition of Rs. 1,85,60,000/- u/s. 68 and the addition of Rs. 11,99,250/- on account of bogus trading loss are deleted.*

5. It was the submission that as no incriminating materials have been found, the assessment order passed u/s.153A r.w.s.143(3) of the Act itself dated 19.07.2021 would not survive. It was further submission that no incriminating material in relation to the said carbon credit which has been claimed as capital receipt by the assessee has also been found in the course of search and consequently the order passed u/s.263 of the Act is liable to be quashed.

6. In reply, Id.CIT-DR vehemently supported the orders of the Id. Pr.CIT. It was the submission that the carbon credit was generated on account of the revenue operations of the assessee and the income from carbon credits is liable to be assessee only as revenue income and not as a capital receipt. It was the further submission that the provisions of Section 115BBG of the Act has also been introduced w.e.f.. 1<sup>st</sup> April, 2018. It was the submission that the order of the Id. Pr.CIT is liable to be upheld.

7. We have considered the rival submission. Admittedly the assessment order u/s.153A r.w.s.143(3) of the Act dated 19.07.2021 has been passed in consequence of search and seizure operation conducted on the assessee. Admittedly, there is no incriminating material found in the course of search in relation to the carbon credit. It is also an admitted fact that the assessee has in his audited accounts under the head revenue from operations in the notes to the financial statements at para 17 shown the income from the carbon credits. After showing the income from the carbon

receipts under the revenue head has in the computation of income reduced the same and claimed it as capital receipts. However, as the revision of the order is in respect of an order u/s.153A r.w.s.143(3) of the Act, obviously there must be some incriminating material on the basis of which the assessment has been done, if such incriminating material is available then in view of the decision of the Hon'ble Supreme Court in the case of *Abhisar Buildwell (P) Ltd.*, reported in [2023] 149 taxmann.com 399/459 ITR 212 (SC), the AO would be entitled to assume the jurisdiction to assess or reassess the total income, taking into consideration the incriminating material unearthed during the search and the other materials available with the AO including the income declared in the returns. However, in the present case as incriminating material which has been considered by the AO being SME/HD/1 and SME/HD/2 has been held to be not incriminating documents by the Id. CIT(A) in his order against the said assessment order passed u/s.153A r.w.s.143(3) of the Act dated 19.07.2021. This being so, the very foundation for the assessment order having been lost and no incriminating material in respect of carbon credits having been found during the course of search, the findings of Id. Pr.CIT(Central) Kolkata-1 in para 6.iii no more survives and consequently the order passed u/s.263 of the Act by the Id. Pr.CIT would fail. Consequently the order passed u/s.263 of the Act by the Id Pr.CIT stands set aside and the appeal of the assessee is allowed.

8. Thus, the appeal in ITA No.873/Kol/2024 for A.Y.2014-2015 is allowed.

9. Now, we shall take up the appeals in **ITA Nos.1016 & 1017/Kol/2024** in the case of assessee M/s Shyam Metalics and Energy Ltd. for the assessment years 2017-2018 & 2018-2019 and **ITA Nos.1018 to 1020/Kol/2024** in the case of M/s Shyam Sel and Power Limited for the assessment years 2017-2018, 2018-2019 & 2019-2020.

10. In these cases, Id. AR submitted that the issues in these appeals in the case of both the assesseees are identical. It was the submission that in the course of assessment u/s.153A r.w.s.144C(3) of the Act the AO had disallowed the assessee's claim of deduction u/s.80IA(iv) of the Act. It was the submission that the Id. Pr.CIT had invoked his power u/s.263 of the Act in respect of computation of the claim of deduction u/s.80IA of the Act on the ground that there was no allocation of "head-office expenses" while computing the profit. It was the submission that when passing the assessment order u/s.153A on 31.08.2021 the AO had made certain disallowance of deduction u/s.80IA of the Act as is mentioned in para 5.02 and 5.03 of the assessment order. It was the submission that this disallowance was the subject matter of an appeal before the Id. CIT(A) and further appeal before the ITAT and the Tribunal has also adjudicated on the quantification of the deduction u/s.80IA of the Act on the captive power plant in each of the cases as follows :-

## Statement of present Appeal against 263 order passed by PCIT (Central), Kolkata - 1

Assessee Name	AY	Appeal No. (Present appeal)	Issue involved in the present appeal	In Quantum Appeal Order passed by ITAT, Kolkata Bench - C	Date of Order	Issues in Quantum Appeal
SHYAM METALICS & ENERGY LTD.	2017-18	ITA NO. 1016/KOL/2024	Allocation of Common Expenses to the eligible Captive Power plant (CPP) in determining income and deduction u/s 80-IA. It was alleged that the assessee did not apportion the common expenditure to eligible CPP units. After assessee's reply it was set aside with direction to make necessary verification/inquiry on the instant issue to the AO.	IT(SS)JA No. 106/Kol/2023 [A] & IT(SS)JA No. 127/Kol/2023 [D]	12.08.2024	Quantification of deduction u/s 80-IA on Captive Power Plant (CPP)
	2018-19	ITA NO. 1017/KOL/2024	-Do-	IT(SS)JA No. 107/Kol/2023 [A] & IT(SS)JA No. 128/Kol/2023 [D]	12.08.2024	-Do-
	2017-18	ITA NO. 1018/KOL/2024	-Do-	IT(SS)JA No. 108/Kol/2023 [A] & IT(SS)JA No. 129/Kol/2023 [D]	12.08.2024	-Do-
	2018-19	ITA NO. 1019/KOL/2024	-Do-	IT(SS)JA No. 79/Kol/2023 [A] & IT(SS)JA No. 91/Kol/2023 [D]	12.08.2024	-Do-
SHYAM SEL & POWER LTD.	2019-20	ITA NO. 1020/KOL/2024	-Do-	IT(SS)JA No. 109/Kol/2023 [A] & IT(SS)JA No. 130/Kol/2023 [D]	12.08.2024	-Do-

## SHYAM SEL GROUP

Sl.No.	Name of the Company	AY	Date of Order U/s 153A	Date of Order of Ld. CIT(A)	Date of Filing appeal before Hon'ble ITAT on Quantum Issue along with Appeal No.	Date of Issuance of Show cause Notice u/s 263 of the Act against order u/s 153A	Date of Order u/s 263 of the Act	Date of order of Quantum appeal before ITAT on 80-IA Issue
1	Shyam Metals & Energy Ltd	2017-18	31.08.2021	02.06.2023	IT(SS)A No. 106/Kol/2023 [A] - (28.07.2023) & IT(SS)A No. 127/Kol/2023 [D] - (24.08.2023)	20.02.2024	14.03.2024	12.08.2024
2		2018-19	31.08.2021	02.06.2023	IT(SS)A No. 107/Kol/2023 [A] - (27.07.2023) & IT(SS)A No. 128/Kol/2023 [D] - (24.08.2023)	20.02.2024	14.03.2024	12.08.2024
3	Shyam Sel & Power Ltd	2017-18	25.08.2021	02.06.2023	IT(SS)A No. 108/Kol/2023 [A] - (27.07.2023) & IT(SS)A No. 129/Kol/2023 [D] - (24.08.2023)	09.02.2024	18.03.2024	12.08.2024
4		2018-19	12.07.2021	31.03.2023	IT(SS)A No. 79/Kol/2023 [A] - (15.05.2023) & IT(SS)A No. 91/Kol/2023 [D] - (02.06.2023)	09.02.2024	18.03.2024	12.08.2024
5		2019-20	12.07.2021	02.06.2023	IT(SS)A No. 109/Kol/2023 [A] - (27.07.2023) & IT(SS)A No. 130/Kol/2023 [D] - (24.08.2023)	09.02.2024	18.03.2024	12.08.2024

## SHYAM SEL GROUP

Sl.No.	Name of the Company	Asst. Year (Date of 263 Order)	Quantum ITAT Appeal No in Order dated 12.08.2024 passed by Hon'ble ITAT, Kolkata, C - Bench (Date of filing of appeal)	Eligible Amount	Claimed in Return	Claimed in 153A	Allowed by AO vide order u/s 153A (Date of Order)	Allowed by CIT(A) (Date of Order)	Hon'ble ITAT Order on 80-IA issue dated 12.08.2024
1	Shyam Metals & Energy Ltd	2017-18 (14.03.2024)	IT(SS)A No. 106/Kol/2023 [A] - (28.07.2023) & IT(SS)A No. 127/Kol/2023 [D] - (24.08.2023)	1,30,38,12,667	12,17,57,431	11,77,59,811	Nil (31.08.2021)	11,77,59,811 (02.06.2023)	i) Assessee has not disputed this issue. ii) Department appeal on this issue dismissed by Hon'ble ITAT
2		2018-19 (14.03.2024)	IT(SS)A No. 107/Kol/2023 [A] - (27.07.2023) & IT(SS)A No. 128/Kol/2023 [D] - (24.08.2023)	1,96,96,04,281	1,88,00,28,170	1,86,60,47,588	9,96,46,441 (31.08.2021)	1,75,13,71,692 (02.06.2023)	i) Assessee has not disputed this issue. ii) Department appeal on this issue dismissed by Hon'ble ITAT
3		2017-18 (18.03.2024)	IT(SS)A No. 108/Kol/2023 [A] - (27.07.2023) & IT(SS)A No. 129/Kol/2023 [D] - (24.08.2023)	51,27,66,158	51,27,66,158	51,27,66,158	Nil (25.08.2021)	42,18,20,214 (02.06.2023)	i) In assessee's appeal, ITAT has restored the issue to the file of AO to verify the claim of power rate raised by assessee and allow the same u/s 80-IA accordingly. ii) Department appeal on this issue dismissed by Hon'ble ITAT
4	Shyam Sel & Power Ltd	2018-19 (18.03.2024)	IT(SS)A No. 79/Kol/2023 [A] - (15.05.2023) & IT(SS)A No. 91/Kol/2023 [D] - (02.06.2023)	89,03,62,062	89,03,62,062	89,03,62,062	Nil (12.07.2021)	79,96,25,952 (31.03.2023)	i) Department appeal on this issue dismissed by Hon'ble ITAT ii) Assessee has not disputed this issue.
5		2019-20 (18.03.2024)	IT(SS)A No. 109/Kol/2023 [A] - (27.07.2023) & IT(SS)A No. 130/Kol/2023 [D] - (24.08.2023)	2,66,62,77,927	2,66,62,77,927	2,66,62,77,927	62,16,38,851 (12.07.2021)	2,03,33,10,005 (02.06.2023)	ii) Department appeal on this issue dismissed by Hon'ble ITAT

11. It was the submission that as the issue of provision u/s.80IA of the Act has been considered by the AO in the assessment order and it is the subject matter of an appeal before the Id. CIT(A) as also the Tribunal, in view of the sub-clause (c) to the Explanation 1 to Section 263 of the Act, the same could not be considered, as the issue has already been merged with the order of the Id. CIT(A). It was the submission that the order of the Id. Pr.CIT(Central)-1, Kolkata in all the appeals are required to be quashed.

12. In reply, Id. CIT-DR vehemently supported the order of the Id. Pr.CIT. It was the submission that the AO had considered the issue of the deduction u/s.80IA of the Act. When computing the deduction u/s.80IA of the Act, the AO had not considered the apportionment of the common expenses under the head office expenses or the other expenses, finance cost and the employee benefits. It was the submission that this was not the subject matter of the assessment order nor the appeal before the Id. CIT(A) or the ITAT.

13. We have considered the rival submissions. For better understanding, it would be worthwhile to extract the provisions of sub-clause (c) of Explanation 1 to Section 263 of the Act, which reads as follows :-

***Revision of orders prejudicial to revenue.***

***263. (1)***

***Explanation 1.***

(c) *where any order referred to in this sub-section and passed by the Assessing Officer or the Transfer Pricing Officer, as the case may be, had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the Principal Commissioner or Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.*

14. The word used is that the powers of the Principal Commissioner under this sub-section shall extend and shall be deemed always to have extended to “such matters” as had not been considered and decided in such appeal. The word used is not “subject matter”. The word used is “such matters”. “Such matters” is a very restrictive term. “Subject matter”, on the other hand, would incorporate all issues relevant to a particular issue. “Such matters” give option for pick and choose. A general issue of deduction u/s.80IA of the Act would come under “subject matter”. Specific issues in deduction u/s.80IA of the Act would come under “such matters”. Now, it is noticed that in the assessment order the AO has only considered the deduction u/s.80IA of the Act by considering the depreciation. Even though the said accounts of the assessee clearly showed other expenses and finance cost and employee benefit expenses but the AO did not consider the same when apportioning the expenditure relatable to each of the captive power plants. Admittedly, this is an error and this error has also caused prejudice, insofar as the deduction u/s.80IA of the Act has wrongly been computed. The issue of apportioning of the expenses was not the subject matter of deduction/ us.80IA of the Act, which was in appeal before the Id. CIT(A) or the ITAT. The wrong computation of the deduction u/s.80IA of the Act was very much open to the Id. Pr.CIT to invoke his powers u/s.263 of the Act, insofar as such computation was not the issue in the appeal nor the issue in the assessment. This being so, we are of the view that the order passed u/s.263 of the Act in all the impugned appeals are liable to be upheld and we do so.

15. Thus, the appeals of both the assesses ie. ITA Nos.1016 to 1020/Kol/2024 are dismissed.

16. In the result, appeal of the assessee-M/s Shyam Metalics And Energy Ltd. in ITA No.873/Kol/2024 is allowed and ITA Nos.1016&1017/Kol/2024 are dismissed. And the appeals in the case of M/s Shyam Sel & Power Limited in ITA Nos.1018 to 1020/Kol/2024 are dismissed.

Order dictated and pronounced in the open court on 13/08/2025.

**Sd/-  
(RAKESH MISHRA)**

लेखा सदस्य/ ACCOUNTANT MEMBER

**Sd/-  
(GEORGE MATHAN)**

न्यायिक सदस्य / JUDICIAL MEMBER

**कोलकाता** Kolkata; दिनांक Dated 13/08/2025

*Prakash Kumar Mishra, Sr.P.S.*

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कोलकाता** / DR,  
ITAT, Kolkata
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Assistant Registrar)  
Income Tax Appellate Tribunal, Kolkata