

IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI BENCH, GUWAHATI
(VIRTUAL HEARING AT KOLKATA)

SHRI MANOMOHAN DAS, JUDICIAL MEMBER
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No. 100/GTY/2023
Assessment Year: 2017-18

SMS Smelters Limited,

NH 52 A Lekhi Village,
Naharlagun, Dist, Papumpare,
Arunachal Pradesh - 791110
[PAN: AABCN7147D]

.....**Appellant**

vs.

Assistant Commissioner of Income Tax,

Circle-3, Guwahati,

7th Floor, Aaykar Bhawan,
Christian Basti, G.S. Road,
Assam - 781005

..... **Respondent**

Appearances by:

Assessee represented by : J.P. Gupta, FCA
Department represented by : Kausik Ray, JCIT

Date of concluding the hearing : 13.10.2025

Date of pronouncing the order : 28.10.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER:

1. The present appeal arises from the order u/s 250 of the Income Tax Act, 1961 (hereafter “the Act”), dated 07.07.2023, passed by the Ld. Commissioner of Income Tax (Appeals), Central, North-East Region, Guwahati [hereafter “the Ld. CIT(A)].

1.1. In this case, it is seen that the assessee is an old existing business involved in manufacturing and trading of Ferro Silicon/Charcol/Ingot. It has been recorded by the Ld. AO that the assessee did not furnish

complete notes and schedules to the balance sheet and profit and loss account and thus decided to investigate the amount of Rs. 1,52,08,627/- debited as interest expenses and bank charges in the assessee's accounts. The Ld. AO found that allegedly, the borrowed funds have been used for the purposes of loans and advances to connected concerns or for investment in equity instruments. Thereafter, this amount was added to the income of the assessee. Secondly, a disallowance of Rs. 33,247/- has also been made u/s 36(i)(va), read with section 2(24)(x) of the Act.

1.2 Aggrieved with these additions, the assessee approached the Ld. CIT(A) where he could not succeed with respect these additions. Briefly, the Ld. CIT(A) held regarding the addition on account of interest disallowance that the Ld. AO was justified. Some extracts from the relevant portions of the impugned order deserve to be extracted at this stage:

It is evident from Audited Financial Statement of the Appellant that it has used Rs. 39,63,08,942/ under Non-Current Investment as on 31.03.2017 apart from other funds under Short Term Loan and Advances. It is a matter of record that the Appellant has not adduced any evidence to establish "commercial expediency" of the purported Non-Current Investments or Short-Term Loan and Advances.

Further, the Appellant has not brought on record any evidence to establish that any interest/ other income have been earned from the purported Non-Current Investment or Short-Term Loan and Advances. Au-contraires, as is evident from above discussion that the Appellant has taken Interest bearing Loans and Advances in form of Long-Term Borrowing and also Short-Term Borrowings on which Interest aggregating to Rs. 1,52,08,627/- has been claimed as expense in Profit and Loss Account. It has been claimed by the Appellant that the purported interest free investments/ Loan and Advances has been made out of Share Capital and Reserves & Surplus, however, the Appellant has not adduced any evidence to co-relate/establish that the funds received on account of Share Capital or Reserves and Surplus were been used to make the purported interest free investments/ Loan and Advances. The Appellant has also not furnished any evidence to establish that the purported Interest bearing funds had been used for the purpose of business only. No new material on evidence has been adduced by the Appellant during the course of present Appellate proceedings other than those already filed before the AD and which has already been considered by the AO while passing the impugned Assessment Order dated 14.12.2019 In view of above stated facts, in my considered opinion, the disallowance of interest expense of Rs. 1,52,08,627/ by the AO is correct. This ground of appeal is, accordingly, dismissed.

During the course of the appellate proceedings, the Appellant has also claimed that the purported Non-Current Investment and Short-Term Loan and Advances are majorly pertaining to earlier year(s). Be that so, the fact remains that the Appellant has failed to adduce any evidence to establish the business rationale of such investments. Even though the law is trite that an AO cannot sit in the arm chair of an assessee. However, even the said settled proposition is subject to proving the commercial expediency. In the absence of establishing the basic foundation, ie "the commercial expediency", the further contentions are merely akin to beating the bush

Even presuming that there were no fresh investment during the captioned assessment year, there is nothing on record which would even remotely suggest as to whether (during any of the preceding assessment years), the then AD(s) had conducted any enquiry/investigation with respect to allowability of claim of interest expenses in the case of the Appellant in such earlier year(s). Further presuming that there was some such enquiry/verification in respect of the claim of interest expense, yet it is noted that each assessment year is a separate assessment year and mistake committed in one year cannot be allowed to be perpetuated....

Here the undersigned poses a question to himself. Whether, in the absence of relation of the Appellant with these related parties, the Appellant would have advanced interest free advances to any unrelated party? The answer would be a "no". Thus, merely because the parties wherein the investment has been made are related, the Appellant cannot be allowed double enrichment, firstly, on account of claim of interest on borrowed funds and secondly, by avoiding tax liability in respect of interest income / other income which would have been earned in-case the interest would have been charged by the Appellant from such related Parties.

In this case, it is pertinent to mention that huge deduction under Section 80-IC/ Section 80-IE has been claimed by M/s Platinum Alloys Private Limited (being one of the Appellant's related party). In the case of the aforesaid entity, huge investment has been made by the Appellant. However, the aforesaid entity has not claimed any interest expense in respect of the advance / alleged investment. Thus, to the extent the interest expense (in respect of the alleged advance / investment made by the Appellant in M/s Platinum Alloys Private Limited), deduction under Section 80-IC/80-IE has been excessively claimed. The excessive claim of deduction has resulted in lower tax outflow of the group. Thus, on one hand the deduction on account of interest payable is being claimed by the Appellant and on the other hand, the sister concerns of the Appellant are avoiding payment of correct taxes by claiming higher deduction. These observations would not have been possible had the appeal of M/s Platinum Alloys Private Limited for AY 2017-18 would not have been before the undersigned. Thus, the affairs of the Appellant and its other sister concerns are contumacious, shoddy and suspicious. The manner in which the whole scheming is being done (from an overall perspective of a group), it appears that the only purpose is to defraud the Revenue from collection of legitimate taxes. It appears that not only frivolous and bogus claims on account of interest, excessive deduction are being claimed, but there is a clear-cut diversion of public money for private purpose."

1.3 Aggrieved with this action, the assessee has approached the ITAT with the following grounds:

“1. That the CIT(Appeals) erred in law as well as on facts of the case in upholding the addition of Rs. 1,52,08,627/- on account of interest expense disallowed as not being incurred for the purpose of business to the total income of the appellant U/s 37 of the Income Tax Act, 1961. The same may kindly be deleted.

2. That the CIT(Appeals) erred in law as well as on facts of the case in sustaining the addition of Rs.33,247/- on account of employee contribution towards Provident Fund being paid after the due date, to the total income of the appellant U/s. 36(1) (va) r. w. s. 2(24)(x) of the Income Tax Act, 1961. The same may kindly be deleted.

3. That the appellant craves leave to submit any other ground/s on or before the hearing of the appeal.”

2. Before us, the Ld. AR stated that they are an old running company and bank loan was taken for the purposes of business. The Ld. AR vehemently argued that while the Ld. AO is recording in para 4.1 at page 2 of his order that no details were filed, but actually considerable details were filed and the same could also be seen in the paper book. The Ld. AR admitted that some loans and advances reflected in the accounts of the assessee were actually given to connected parties. The quantum of such loans and advance to connected parties would be in the region of around Rs. 37 cr. The Ld. AR stated that there was a clear nexus between the business of the assessee and the term loan taken from the bank and thus, the interest was fully allowable as claimed. Significantly, regarding the addition on account of EPF contribution it was pointed out that the assessee had already disallowed the same on its own and thus a further addition amounted to double taxation of the same amount.

2.1 The Ld. DR relied on the orders of authorities below.

3. We have carefully considered the rival submissions and perused the orders of authorities below and have gone through the contents of the paper book. Considering the facts before us, it is clear that the assessee has not been able to prove conclusively that the term loan taken from the bank was not utilised for any other purpose than running of the business. It is also not clear whether part of the term loan, as alleged by the

authorities below, was used for any other purposes than the running of business and was not used for advancing interest free or on very small interest rates, to any sister concern. This would require to be enquired into and investigated afresh so that there is no ambiguity about the factual matrix of this case. We are also mindful of the judgment in the case of S.A. Builders reported in 288 ITR 1 (SC) where such an issue has been conclusively dealt by the Hon'ble Apex Court and in this case law there is also the dictum that the AO must not place himself in the shoes of the businessman to decide what is commercially expedient or not. Accordingly, we set aside the impugned order for this issue and remand the same back to the Ld. AO for fresh investigation and enquiry for determining the exact nexus between the term loan and its utilisation for the business of the assessee. The order in the case of S.A. Builders (supra) will be kept in mind by the Ld. AO.

3.1 Regarding the issue of EPF contribution, the Ld. AO would verify in case the assessee has himself disallowed the same and in case this be so then there cannot be any addition on that account.

4. In result, this appeal is partly allowed for statistical purposes.

Order pronounced on 28.10.2025

Sd/-

[Manomohan Das]
Judicial Member

Sd/-

[Sanjay Awasthi]
Accountant Member

Dated: 28.10.2025
AK, Sr. PS

Copy of the order forwarded to:

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

//True copy//

By order

Assistant Registrar, Kolkata Benches