

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "E", MUMBAI  
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 602/Mum/2021 (A.Y. 2015-16)

Essel Mining & Industries Limited  
Industry House, 18<sup>th</sup> Floor,  
10, Camac Street, Kolkata,  
West Bengal-700017

**PAN: AAACE6607L**

..... Appellant

Vs.

Dy. CIT, Central Circle-1(4),  
9<sup>th</sup> Floor, Old CGO Building,  
M.K. Road, Mumbai-400020.

..... Respondent

Appellant by : Sh. Yogesh Thar  
Respondent by : Sh. Amol B. Kirtane

Date of hearing : 20/06/2022  
Date of pronouncement : 27/06/2022

ORDER

**PER GAGAN GOYAL, A.M.:**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-47, Mumbai [hereinafter referred to as 'the CIT (A)'] vide order dated 05.02.2021 for the Assessment Year (AY) 2015-16. The assessee has raised the following grounds of appeal:

1. That on the facts and in the circumstances of the case and in law, the Commissioner of Income Tax (Appeals) {hereinafter referred to as the CIT(A)} erred in confirming the disallowance of the claim of Carbon Credit Income as Capital Receipt of Rs. 10,20,587/-.
2. That on the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in confirming the disallowance of common expenses of Rs. 59,27,000/-.

2. Brief facts of the case are that the assessee-company filed its return of income on 30.09.2015 declaring a total loss of Rs. 229,54,99,761/-. The case was selected for scrutiny under CASS.

3. During the year under consideration, the assessee was engaged in the business of (i) Raising of Ore, (ii) Mfg. Of Nitrogen Gas & Ferro Alloys, (iii) Trading of Iron Ore & Ferro Alloys, (iv) Generation of electricity (Wind Power & Solar Power), & (v) Railway Siding for captive use and (vi) Operating Lease of Solar Energy Equipment. During the scrutiny assessments following additions were made:

|       |   |                      |
|-------|---|----------------------|
| (i)   | Disallowance under section 14A  | Rs. 35, 88, 82,480/- |
| (ii)  | Disallowance of Club Expenses   | Rs. 107,120/-        |
| (iii) | Disallowance of common expenses<br>against deduction claimed u/s 80IA | Rs. 5,92,7000/-      |
| (iv)  | Carbon Credit treated as Revenue income u/s 28                        | Rs. 102, 05, 87/-    |
| (v)   | Disallowance of claim u/s 40(a)                                       | Rs. 4, 35,810/-      |
| (vi)  | Disallowance U/s 14A added to book profit<br>U/s 115JB also           | Rs. 35, 88, 82,480/- |

4. Against this order of Assessing Officer (AO), assessee preferred an appeal before the Id. CIT(A)-47, Mumbai. A substantial relief was given to the assessee and following additions were deleted as under:

|       |  |                      |
|-------|--|----------------------|
| (i)   | Disallowance under section 14A   | Rs. 35, 88, 82,480/- |
| (ii)  | Disallowance of Club Expenses  | Rs. 107,120/-        |
| (iii) | Disallowance mentioned in (v) & (vi) (supra)<br>not pressed before the CIT(A), hence, dismissed. |                      |

5. The appellant is in appeal before us for Disallowance of common expenses against deduction claimed u/s 80IA of Rs. 5,92,7000/- & Carbon Credit treated as Revenue income u/s 28 of Rs. 102,05,87/-.

6. The Id. CIT (A) while dealing with disallowance of Common Expenses against deduction claimed under section 80IA of Rs. 5, 92, 7000/- held as under:

*“12.0 Ground no.7 deals with deductions claimed by the assessee u/s.80IA in respect of common expenses of Rs.59, 27,000/-. It is seen that while completing the assessment, the Assessing Officer held that profits shown in S80IA units appears to be higher than actual profit on account of not debiting of expenses in respect of travelling and conveyance amounting to Rs.59,27,000/- to the -Units claimed deduction u/s.80IA is disallowed to the extent of Rs.59,27,000/-. He therefore allocated additional travelling expenses of Rs. 59, 27,000/- to the 80IA Units, in the ratio of their turnover to the total turnover and thus reduced deduction u/s 80IA by equivalent amount.*

*12.1 During the course of appellate proceedings, assessee relied upon decision of CIT(A) - 6, Kolkata, who allowed relief to the assessee on this issue in AY 2012-13, vide order dated 26/10/2016. The assessee has also relied upon decision of Ld. Predecessor dated 26/12/2017, wherein following the decision of CIT(A) Kolkata, he directed to delete identical addition. The assessee also argued that this issue is covered in their favour by Hon'ble ITAT decision in the case of assessee for AY 2009-10 and 2010-11.*

*12.1. I have considered the facts of the case, and submissions of the assessee. My Ld predecessor by order dated 26/10/2016 in the case of the assessee for AY 2012-13, observed as under:*

*“This issue also came up in the appellant's case in the immediately preceding year i.e. AY 2009-10. While deciding the appeal no.269/CIT(A)-VI/Cir-5/11-12 for that year, my Ld. Predecessor has upheld the allocation made by the Assessing Officer in respect of the director's remuneration and auditors remuneration. However, so far as the legal and professional expenses and travelling expenses are concerned, he accepted the allocation made by the appellant. It has been submitted that the material facts of the year under consideration are same. I agree with the decision given by my Ld. Predecessor. Following the reasoning given in his order, the allocation made by the Assessing Officer is confirmed in respect of the director's remuneration (allocation of Rs.512.23 lakhs) and auditors remuneration (allocation of Rs.4.23 lakhs) however, the allocation made by the appellant is found to be*

*reasonable in respect to legal and professional expenses and travelling expenses and the Assessing Officer is directed not to disturb the same. The appellant thus gets part relief."*

*16. from the above decision, it is clear that while deleting the addition he followed the earlier decision of CIT (A)-6 Kolkata for AY 2009-10. Therefore, it appears that the merit of the issue was not examined in the above decision. Since the decision of CIT (A)-6 Kolkata for AY 2009-10 is not before me, I am not in a position to offer any comments thereon. Further, my Ld. predecessor while deciding this issue vide order dated 26/12/2017, has followed the order of CIT(A)-6 Kolkata for AY 2012-13 and noted that allocation of travelling and conveyance expenses in the said order was reasonable. However, it appears that merit of issue and apportioned mess of the allocation of the expenditure was not examined. The Assessing Officer while completing assessment has apportioned expenditure in the ratio of turnover as under:*

| <i>Head of common expenditure</i>  | <i>Expenses debited in common P&amp;L a/c (Rs. In lacs)</i> | <i>Consolidate d turnover of entire business</i> | <i>Turnover of Wind power energy 60 MW Rs. In lacs)</i> | <i>Turnover of Wind power energy 15 MW Rs. In lacs)</i> | <i>Turnover of Railway siding unit (Rs. In lacs)</i> | <i>Expenses added to for the purpose of deduction u/s. 80IA (Rs.</i> |
|------------------------------------|---|--|---|---|--|--|
| <i>Travelling &amp; conveyance</i> | 990.30  | 856229.22  | 4161.13   | 964.06  | Nil  | 59,27000   |
|                                    |   |  |   |   |  |  |
|                                    |   |  |   |   |  |  |
|                                    |   |  |   |   |  |  |

*12.2. Thus, the Assessing Officer held that expenses to the tune of Rs. 59, 27,000/- was claimed less in respect of units which were covered u/s 80IA. In appellate proceedings the assessee has failed to furnish any credible explanation or criteria on the basis of travelling and conveyance expenses was allocated to different units including 80IA units. It may also be slated that some travelling expenditure may be done at the level of corporate office or head office, which may have to be allocated to different units in absence of any details to the contrary; I feel the allocation of expenses in the ratio of turnover is a reasonable basis. Since the assessee has not given me details of the turnover and conveyance expenses and how the same has been allocated between various units, f am inclined to uphold the decision of the Assessing Officer in the allocating further expenses of Rs.59,27,000/- in the hands of the assessee for the year.*

*12.3 Consequently, I also upheld decision of the Assessing Officer in reducing deduction u/s.80IA of the Act by an amount of Rs. 5927000/- for the year. This ground of appeal is therefore, decided against the assessee."*

7. Assessee relied upon the decision of CIT (A)-6, Kolkata (AY 2012-13) and ITAT's decision in the case of assessee itself for AY 2009-10 and 2010-11. Wherein it was held that Director's remuneration and Auditor's remuneration should be allocated proportionately as calculated by AO and Legal & Professional Expenses and Travelling Expenses are found to be acceptable as done by assessee.

8. We have considered the order of AO, order of Ld. CIT (A) and submissions of assessee. We found force in the contention of assessee that earlier precedents settled in assessee's own case needs to be examined and followed. **Hence, on this issue, we restore the matter back to the file of the AO and the ground of appeal is partly allowed.**

9. Next ground of appeal pertains to taxability of Carbon Credit received by assessee amounting to Rs. 10, 20,587/-. We have gone through the order of AO and Ld. CIT (A). The decisions of various High Courts and Co-ordinate Benches of Tribunal relied upon by the Ld. CIT (A) are distinguishable and not applicable to the facts of the case.

10. Issue is whether receipts received by the assessee on sale of alleged carbon credit is revenue in nature or capital in nature.

11. Thus, taking into consideration resolution of litigation on this issue by the Legislature itself, which had made provision for taxation of such receipts at the rate of 10 per cent from the assessment year 2018-19. Thus, any sum received on account of carbon credit or protecting the environment is not included in the business income however, subsequently there is an amendment by Finance Act, 2017 whereby Section 115BBG has been inserted in the statute w.e.f 01.04.2018 which reads as under: — "Following section 115BBG shall be inserted after section 115BBF by the Finance Act, 2017, w.e.f. 1-4-2018: Tax on income from transfer of carbon credits. 115BBG. (1) Where the total income of an assessee

includes any income by way of transfer of carbon credits, the income tax payable shall be the aggregate of— (a) the amount of income-tax calculated on the income by way of transfer of carbon credits, at the rate of ten per cent; and (b) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (a). (2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) of subsection (1). Explanation.—For the purposes of this section "carbon credit" in respect of one unit shall mean reduction of one tonne of carbon dioxide emissions or emissions of its equivalent gases which is validated by the United Nations Framework on Climate Change and which can be traded in market at its prevailing market price." Thus, the income by way of transfer of carbon credit has been given a special treatment as chargeable to tax @ 10% and not as part of the normal business income of the assessee. The said amendment is prospective in nature and therefore, cannot be applied to the assessment years under consideration.

12. The Id. AR for the assessee brought to the notice of the Bench that the identical issue has already been decided by the Co-ordinate Bench of Tribunal in favour of assessee in case cited as DCIT Vs. M/s Dawarkesh Sugar Industry Ltd. in ITA No. 312/Mum/2019 for A.Y. 2014-15 by following the decisions rendered by the Hon'ble Andhra Pradesh High Court in the case of My Home Powers Ltd. (2014) 365 ITR 082 (AP).

13. We have perused the order passed by the Co-ordinate Bench of Tribunal in case of M/s Dawarkesh Sugar Industry Ltd. (supra), wherein identical issue has been decided in favour of the assessee by returning following findings.

"7. Considered the submissions of the learned Counsel for both the parties and perused the material on record. While going through the judicial pronouncements relied upon by the learned Counsel for the assessee, we find that the issue for our adjudication is squarely covered by the aforesaid decisions relied upon by the learned Counsel wherein in one of the cases relied upon in CIT v/s My Home Power Ltd., [2014] 365 ITR 082 (AP) (supra) filed by the Revenue, the Hon'ble Andhra Pradesh High Court held that the Tribunal had factually found that Carbon Credit was not off-shoot of business but off-shoot of environmental concerns and no asset was generated in course of business but it was generated due to environment concerns. Further we find that the Hon'ble A.P. High Court agreed with the factual analysis as the assessee carried on business of power generation and Carbon Credit was not even directly linked with power generation. It is held that on sale of excess Carbon Credits income was received and the Tribunal correctly held that it is capital receipt and could not be a business receipt or income. As a matter of convenience, the observations of the Hon'ble A.P. High Court in CIT v/s My Home Power Ltd., [2014] 365 ITR 082 (AP) (supra) is reproduced below:

*"ITAT have considered the aforesaid submission and ITAT are unable to accept the same, as the learned Tribunal has factually found that "Carbon Credit is not an offshoot of business but an offshoot of environmental concerns. No asset is generated in the course of business but it is generated due to environmental concerns' ITAT agree with this factual analysis as the Assessee is carrying on the business of power generation. The Carbon Credit is not even directly linked with power generation. On the sale of excess Carbon Credits the income was received and hence as correctly held by the Tribunal it is capital receipt and it cannot be business receipt or income. In the circumstances, we do not find any element of law in this appeal."*

14. Following the order passed by Co-ordinate Bench of Tribunal in case of M/s Dawarkesh Sugar Industry Ltd. (supra) which is based upon the decision rendered by Hon'ble Andhra Pradesh High Court in case of My Home Power Ltd. (supra), we are of the considered view that sale of Renewable Energy Certificate (Carbon Credit) of income received by the assessee is a capital receipt and could not be business receipt or income nor it is directly linked with the business of the assessee nor any asset is generated in the course of business but it is generated due to environmental concern. So the addition of Rs. 10,20,587/- by the AO from

the sale of Carbon Credit and confirmed by the Id. CIT(A) is not sustainable, hence, ordered to be deleted.

15. In the result, appeal of the assessee is allowed partly for statistical purposes.

Order pronounced in the open court on 27<sup>th</sup> of June, 2022.

Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER

Sd/-  
(GAGAN GOYAL)  
ACCOUNTANT MEMBER

Mumbai, दिनांक / Dated: 27/06/2022

SK, Sr.PS

**Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/ Guard file.

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BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai