IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
Before Shri Kul Bharat, Hon'ble Judicial Member and
Shri Manish Borad, Hon'ble Accountant Member

ITA No. 480/Ind/2013 & 660/Ind/2013
A.Ys. 2008-09 & 2009-10

DCIT 1(1)
Indore ::: Appellant
Vs

M/s Mittal Corporation Limited
Mumbai ::: Respondent

Appellant by	Shri K.G. Goyal
Respondent by	Shri Ajay Tulsiyan
Date of hearing	7.6.2018
Date of pronouncement	27.6.2018

O R D E R

PER SHRI MANISH BORAD, AM

These appeals of the revenue relating to the assessment years 2008-09 & 2009-10 are directed against different orders dated 18.9.2013 of the Commissioner of Income Tax (Appeals)-7, Mumbai, having concurrent jurisdiction over CIT(A)-I, Indore, which are arising out of

the orders u/s 143(3) r.w.s. 254 of the Act dated 30.12.2010 and 28.12.2011 framed by Additional CIT, Range-I, Indore.

2. In ITA No. 480/Ind/2013 the revenue has taken the following grounds :-

"(i)On the facts and in the circumstances of the case, the ld. CIT(A) erred in directing to delete the addition of Rs.29,81,971/- of excise duty in the valuation of closing stock mainly on the ground that the assessee had followed exclusive method without appreciating the facts that as per the provisions of section 145A of the IT Act aforesaid element of excise duty was to considered in the valuation of closing stock.

(ii) While holding so, the ld. CIT(A) failed to appreciate that on the identical issue in the A.Y. 2006-07 the aeal of the assessee was dismissed."

In ITA No. 660/Ind/2013 the revenue has taken the following grounds :-

(i) *On the facts and in the circumstances of the case, the learned CIT(A) erred in deleting the addition of Rs.5,85,584/- made by the A.O. on account of valuation of closing stock because the department is already in appeal before the Hon'ble ITAT on this point in A.Y. 2008-09.*

(ii) *On the facts and in the circumstances of the case, the learned CIT(A) erred in deleting the addition of Rs.14,60,194/- made by the A.O. on account of interest payment because the assessee had kept huge portion of the interest bearing borrowed funds idle.*

(iii) *On the facts and in the circumstances of the case, the learned CIT(A) erred in deleting the addition of Rs.14,60,194/- holding that the loans were*

obtained as per commercial expediency because the provisions of section 36(1)(iii) envisages that the borrowed funds should wholly and exclusively be utilised for business purpose.

(iv) *It is, therefore, prayed that the order of the CIT(A) may be set aside and the order of the A.O. may please be restored."*

3. From the perusal of the above grounds we find that the first common issue relates to deletion of addition made on account of valuation of closing stock of Rs.29,81,971/- for the assessment years 2008-09 and 2009-10. The second issue for the assessment year 2009-10 relates to deletion of disallowance of interest expenditure made by the Assessing Officer.

4. Apropos first common issue we shall take up the facts from the assessment year 2008-09. Briefly state, the facts are that the assessee is a limited company engaged in

the manufacturing of MS/SS steel. The income of Rs.2,37,54,910/- declared in the return of income filed on 27.2.2009. Case selected for scrutiny. Necessary notices u/s 143(2) and 142(1) of the Act were served. After examining the record, the Assessing Officer completed the assessment assessing the income at Rs. 26,80,088/- after making addition towards undervaluation of closing stock of Rs. 29,81,971/- and disallowance u/s 40A(IA) of Rs.64,000/-.

5. The assessee preferred appeals before the learned Commissioner of Income Tax (Appeals) and succeeded on both the grounds. Now the revenue is in appeal against deletion of addition towards under-valuation of closing stock.

6. The learned DR supported the findings of the Assessing Officer and the learned counsel for the assessee relied upon the findings of the learned Commissioner of

Income Tax (Appeals) and also relied upon the judgment of the Hon'ble Supreme Court in the case of CIT vs. Indo Nippon Chemicals Limited; 261 ITR 275.

7. We have heard both the parties and perused the material available on record. The issue before us relates to addition towards undervaluation of closing stock. The learned Assessing Officer observing that the assessee has not included the excise duty while valuing the stock of scrap, applied provisions of section 145A of the Act and calculated the undervaluation of closing stock at Rs.29,81,971/-. Before the Assessing Officer the assessee contended that it has duly followed the accounting standard (AS-2) issued by the ICAI which refers to valuation of inventories and it has been provided that the cost of purchase of inventories shall be reduced by any rebates, draw-backs and other similar items and the assessee has been valuing its inventory adopting exclusive

method thereby not including excise duty element in purchases as well as closing stock.

8. We further observe that the learned Commissioner of Income Tax (Appeals) following the judgment of the Hon'ble Supreme Court in the case of Nippon Chemicals Limited (supra) deleted the addition observing as follows :-

> *"4.5 I find that the Assessing Officer has only stated that the appellant's contentions are not acceptable in view of the provisions of section 145A. The A.O. opined that as per specific provisions of section 145A of the Act, the appellant should have included excise duty element for the purposes of valuation of its closing stock which has not been done. Therefore, the appellant has undervalued its stock to this extent. But I find that the appellant has applied and followed 'exclusive' method of accounting duly recognized by the Institute of Chartered*

Accountant where the excise duty paid on the purchase of raw material is not charged to the profit and loss account and is kept in a separate account which is grouped under the head of current assets and was ultimately adjusted against the liability of excise duty collected and payable on sales. Any such amount of expenses which is not claimed by the appellant while computing the profit of business cannot be added to the closing stock by relying on the bare reading of section 145A. It is also accepted rule that whether the assessee follows 'exclusive' method or 'inclusive method', the same shall be tax neutral. If the A.O. wanted to apply the provisions of section 145A, the same should have been applied to all the items of trading account such as opening stock, purchases, sales and closing stock, without doing so the correct profits for any year cannot be ascertained by simply increasing the valuation of the

closing stock. It is also settled that the profitability of any year will remain the same whether 'inclusive method' or 'exclusive method' is followed. Addition of excise duty only to the valuation of closing stock would always give a distorted figure. In this respect, I keep reliance on following judicial pronouncements :

1. CIT v. Indo Nippon Chemicals Ltd. (2003) 261 ITR 275 (SC)

2. CIT vs. Shri Ram Honda Power Equipment Limited 2012 – TIOl -88- S.C.

3. CIT vs. Dynavision Ltd. (2012) 348 ITR 380 (S.C.)

4. Chainrup Sampatram vs. CIT (1953) 24 ITR 481 (S.C.)

5.M/s Rajratan Globe Wire Ltd. vs. ACIT;ITA No.768/Ind/2006

6.ACIT vs. M/s Tesla Transformers 2010 15 ITJ 877 (Tribunal) Indore

7. ACIT vs. D&H Secheron Electrodes (P) Ltd. 173 Taman 188

4.6 In the aforestated facts of the appellant's case, I have considered the A.O.'s order as well as the appellant's submission. Having considered both, I find sufficient force in the submissions made by the appellant's AR. It is also a fact on record that the appellant has been following the exclusive method

consistently for the past many years and there is no deviation from the same. The said method is also in consonance with the guidance note prescribed by the ICAI and the generally accepted accounting principles. Whatever method may it be 'exclusive' or 'inclusive' is followed by the appellant, the same is tax neutral. Moreover the Assessing Officer cannot give the treatment of adding excise duty to the closing stock only in isolation and the same treatment has to be given to other items also of the Trading account. If such an isolated treatment is given to the closing stock alone that would not only distort the correct profit position but would also be against the principles of accountancy. In this perspective of the appellant's case I am not in agreement with my Predecessors decisions in A.Y. 2006-07 wherein he confirmed the similar addition which is disputed by the appellant before Hon'ble ITAT, Indore. Thus, taking note

of the decision of APEX Court in the case of M/s (2003) 261 ITR 275 (S.C.) in the case of CIT vs. Indo Nippon Chemicals Limited wherein the Hon'ble Apex Court and decision of Mumbai ITAT in the case of Hawkins Cookers Ltd. vs. ITO (2008) reported in 14 DTR 206 (Mumbai A Bench) And also after taking note of all the decisions as detailed in para 4.5, I am of the considered view that the A.O. was not justified in his action while making the aforesaid addition. Accordingly, the addition so made by the A.O. is deleted."

9. From the perusal of the findings of the learned Commissioner of Income Tax (Appeals) and also carefully going through the judgment of the Hon'ble Supreme Court in the case of Nippon Chemicals Limited (supra), we find that in the given facts it is well settled that if the assessee follows exclusive method of accounting i.e. when the assessee accounts for the excise duty and taxes

paid/charges under the head “current asset” and records purchases on net of taxes then as per the accounting method the assessee is not required to add the excise duty and other taxes while valuing the closing stock else the figures of trading/manufacturing account will stand distorted. In the instant case, the assessee follows exclusive method of accounting for many years and, therefore, the action taken by the Assessing Officer was not justified and the learned Commissioner of Income Tax (Appeals) has rightly deleted the impugned addition. We, therefore, respectfully following the judgment of the Hon'ble Apex Court in the case of CIT v. Indo Nippon Chemicals Ltd. (supra) find no reason to interfere with the conclusion derived by the learned Commissioner of Income Tax (Appeals). This common issue raised by the revenue for assessment years 2008-09 and 2009-10 in ground no. 1 is dismissed.

10. Now we are left with ground no. 2 for the assessment year 2009-10 through which the revenue is aggrieved with the finding of the learned Commissioner of Income Tax (Appeals) deleting the addition of Rs.14,60,194/- on account of interest payment because the assessee had kept huge portion of interest bearing borrowed funds idle. Brief facts relating to this issue are that the Assessing Officer observing that the assessee on the one hand has claimed interest of Rs.401.31 lacs paid on the working capital loan from bank and on the other it kept huge cash in hand which was kept idle throughout the year. The Assessing Officer brushed aside the submission of the assessee that huge cash fund was required to control the business operated from multiple branches and sites and, therefore, concluded the assessment by making disallowance of interest expenditure of 14,60,194/-. The assessee succeeded in appeal before

the learned Commissioner of Income Tax (Appeals). Now the revenue is in appeal before the Tribunal.

11. The learned DR vehemently supported the order of the Assessing Officer whereas the learned counsel for the assessee referred to and relied upon the submissions made before the learned Commissioner of Income Tax (Appeals) and findings of the learned Commissioner of Income Tax (Appeals).

12. We have heard both the parties and perused the material available on record. The issue before us is whether the learned Commissioner of Income Tax (Appeals) was justified in deleting the disallowance of interest of Rs.14,60,194/-. The Assessing Officer made the impugned disallowance observing that the assessee is paying heavy interest expenditure of Rs. 401.30 lacs but failed to utilise the funds expeditiously as it possessed huge cash in hand throughout the year. We find that the learned

Commissioner of Income Tax (Appeals) appreciated the contention of the assessee that the business of the assessee is scattered over multiple branches and sites and each site operated independently requiring cash balance. At the year end the separate accounts of the units are merged which shows high cash balance. The cash has been maintained as per business requirements and it is not in the domain of the Assessing Officer to suggest the method and manner in which the assessee should conduct its business and unless and until any wrong doing is noticed, the department cannot step in the shoes of the businessman because it is only the businessman who knows how to run his business properly. The learned Commissioner of Income Tax (Appeals) after appreciating the contentions of the assessee deleted the addition of Rs.14,60,194/- finding no merit in the contention putforth by the Assessing Officer in invoking provisions of section

36(1)(iii) of the Act. Even before us the learned DR failed to controvert the findings of the learned Commissioner of Income Tax (Appeals). We find that the Assessing Officer has given no plausible reason nor has he pointed out any fact to show that the alleged idle funds were utilised otherwise than for business purposes and merely for maintaining cash in hand to conduct the business expeditiously, such disallowance was not justified. We, therefore, uphold the findings of the learned Commissioner of Income Tax (Appeals) and dismiss revenue's ground no. 2 raised for the assessment year 2009-10.

13. In the result, both the appeals of the revenue stand dismissed.

Pronounced in open Court on 27June, 2018.

Sd/-	sd/-
(KUL BHARAT) JUDICIAL MEMBER	(MANISH BORAD) ACCOUNTANT MEMBER

27 June, 2018

Dn/-

Copy to – Appellant/Respodent/Pr.CIT/CIT(A)/DR/Guard File

By order

Private Secretary