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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA 880/2019**

**THE PR. COMMISSIONER OF INCOME TAX –
CENTRAL -1**

.....Appellant

Through: Mr. Puneet Rai, SSC along with
Mr. Gibran Naushad, Mr.
Ashvini Kumar and Mr.
Rishabh Nangia, JSCs.

versus

MIDEAST INTEGRATED STEELS LTD.Respondent

Through: Mr. Salil Aggarwal, Sr. Adv.
with Mr. Madhur Aggarwal and
Mr. Uma Shankar, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

ORDER

11.03.2025

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1. The Principal Commissioner impugns the order of the **Income Tax Appellate Tribunal**¹ dated 12 April 2019. The appeal itself had come to be admitted by us in terms of our order of 20 December 2022 on the following question of law:-

“(i) Whether the order passed by the Income Tax Appellate Tribunal [in short, "Tribunal"] is perverse inasmuch as it confirmed the order of the Commissioner of Income Tax (Appeals) [in short, "CIT(A)] whereby the mining expenses claimed by the petitioner had been deleted to the extent of 20%.?”

2. The solitary issue that arises for our consideration is the deletion of additions which were made in respect of mining expenses stated to have been incurred. From the material placed on our record and which is also noticed by the **Commissioner of Income-tax**



(Appeals)², we find that a remand report had been called from the **Assessing Officer**³ and on the basis of which the CIT(A) came to the following conclusions: -

“5.4 I have considered the facts of the case, basis of disallowance made during assessment and remand report of the AO. During the assessment proceedings, it was concluded by AO that complete bills and vouchers in respect of mining expenses were not produced by appellant for verification. However, in the first remand report dated 18.04.2012, AO certified that the books of account and original vouchers of mining expenses were produced by appellant, which were test checked randomly and expenses were found verified. When the AO was asked to specify the un-vouched expenses under the mining expenses, she again verified the bills and vouchers and found that the appellant was not able to produce the vouchers amounting to Rs. 83,17,261/-, as discussed by her in the remand report. The appellant also, during the appellant proceedings could not contradict the conclusion drawn by AO during remand proceedings. In view of this, since the primary evidence in the form of bills and vouchers are not available with appellant to support the expenses amounting to Rs. 83,17,261/-, the expenses to the extent of this amount are not allowable expenses. I, therefore, upheld the disallowance of Rs. 83,17,261/- out of the total disallowance of Rs. 10,64,56,441/- made by AO and grant relief of Rs. 9,81,39,1801/-. This ground is partly allowed.”

3. This was followed by a second remand report which is stated to have been obtained from the AO and was presented on 27 August 2015. The AO had taken note of the stand of the assessee that since the records pertained to a period of distant vintage, most of it was unavailable and consequently, it had expressed its inability to produce each and every voucher and bill. In light of the aforesaid, the AO had opined that the assessee was unable to substantiate its claim in respect of mining expenses.

4. We note that even at the stage of framing the original order of

¹ Tribunal

² CIT(A)

³ AO



assessment, the AO had observed as follows: -

“3. During the assessment proceedings the assessee was asked to produce the books of account for verification. The books were produced on different dates and the same were verified on test check- basis. In the profit and loss account the assessee has debited an amount of Rs. 53.22 crores under the head "mining expenses". The assessee was required to produce the books along with the bills and vouchers in support of the above expense. However despite giving the assessee numerous support of the above expense. However despite giving the assessee numerous opportunities the assessee has failed to furnish all the vouchers and bills in support of the mining expenses. Part bills and vouchers produced in support also had many discrepancies in it which were specifically pointed out to the authorized representatives at the time of hearing. Keeping in view the fact that the assessee has failed to furnish credible evidences in support of the expenses claimed. 20% of entire expense of Rs. 53.22 crores is disallowed as un-vouched and added to the income of the assessee for the year under consideration. The assessee has claimed a total amount of Rs. 53,22,82,206 as mining expense. Out of the above amount, 20% being Rs. 10,64,56,441/- is disallowed and added to the income for the year.”

5. It was thus on the basis of the record which was available at the relevant time that the assessee had sought to assail the disallowances which were made. However, and as is manifest from the aforesaid extract, this was not a case where the books of account were either doubted or had ultimately come to be rejected by the AO. In view of the aforesaid, the ad hoc deletion which was made cannot possibly be sustained. It is the aforesaid aspect which appears to have weighed upon the Tribunal and which has ultimately come to observe as follows: -

“9. We have heard the rival submissions and have given thoughtful consideration to the orders of the authorities below. We have also gone through the remand report of the Assessing Officer exhibited elsewhere. We find that the first appellate authority gave two opportunities to the Assessing Officer with a specific direction to specify the unvouched expenses under the head mining expenses. On the basis of such specific direction, the Assessing Officer examined the accounts and reported that the expenses to the tune of Rs.83,17,261/- were not supported by bills and vouchers. On the



basis of such report, the Id. CIT(A) confirmed the addition to the extent of Rs. 83,17,261/-. We do not find any error or infirmity in the findings of the Id. CIT(A).”

6. The findings so returned cannot possibly and by any stretch of imagination be termed as perverse. Regard must be had to the fact that undisputedly each and every bill or voucher could not be produced by the assessee. Though this did not convince the AO to outrightly reject the books of account, both the AO as well as the CIT(A) were left to make a reasonable assessment with respect to the expenses claimed. That estimation is not one which can be characterized as being manifestly arbitrary or unreasoned. The question as framed is thus answered in the negative and against the appellant.

7. The appeal consequently fails and shall stand dismissed.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

MARCH 11, 2025/DR