

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./IT(TP)A Nos.: 77 & 78/CHNY/2022 & ITA
No.993/CHNY/2022

निर्धारण वर्ष /Assessment Years:2012-13, 2013-14 & 2009-10

Trimex Industries Pvt. Ltd.,
No.1, Trimex Towers, Subbaraya
Avenue, C.P. Ramaswamy Road,
Alwarpet,
Chennai – 600 018.

The ACIT,
v. Central Circle – 1(3),
Chennai.

PAN: AABCT 0212F
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

&

आयकर अपील सं./ITA Nos.: 1035 & 1120/CHNY/2022

निर्धारण वर्ष /Assessment Years:2009-10 & 2013-14

The DCIT,
Central Circle – 1(3),
Chennai.

Trimex Industries Pvt. Ltd.,
v. No.1, Trimex Towers,
Subbaraya Avenue, C.P.
Ramaswamy Road,
Alwarpet,
Chennai – 600 018.

(अपीलार्थी/Appellant)

PAN: AABCT 0212F
(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by
राजस्व की ओर से /Revenue by

: Shri D. Anand, Advocate
: Shri Suresh Guduri, JCIT

सुनवाई की तारीख/Date of Hearing : 12.09.2023

घोषणा की तारीख/Date of Pronouncement : 11.10.2023

आदेश / O R D E R

PER MAHAVIR SINGH, VP:

These cross appeals by the assessee and Revenue for the assessment years 2009-10 & 2013-14 are arising out of the orders of the Commissioner of Income Tax (Appeals)-18, Chennai in ITBA/APL/M/250/2022-23/1045817426(1) & 1046514558(1) dated 22.09.2022 & 28.10.2022. The assessments were framed by the ACIT, Central Circle 1(3), Chennai for the assessment years 2009-10 & 2013-14 u/s.143(3) r.w.s. 92CA(3) of the Income Tax Act, 1961 (hereinafter the 'Act'), vide orders dated 25.03.2013 & 20.12.2016 respectively. The appeal by the assessee for the assessment year 2012-13 in IT(TP)A No.77/CHNY/2022 is arising out of the order of the Commissioner of Income Tax (Appeals)-18, Chennai in ITBA/APL/M/250/2022-23/1046514079(1) dated 28.10.2022. The assessment was framed by the ACIT, Central Circle 1(3), Chennai u/s.143(3) r.w.s. 92CA(3) of the Act dated 07.03.2016.

Assessee's Appeals in IT(TP)A Nos. 77 & 78/CHNY/2022

2. The only common issue in these two appeals of assessee for the assessment years 2012-13 & 2013-14 is as regards to the order

of CIT(A) confirming the action of the AO in disallowing expenses relatable to exempt income by invoking the provisions of section 14A of the Act r.w.rule 8D(2)(ii) & 8D(2)(iii) of the Income Tax Rules, 1962 (hereinafter the 'Rules') for interest disallowance and administrative expenses disallowance. For this, the assessee has raised various grounds in both the years, which are exhaustive and argumentative and hence, need not be reproduced.

3. The facts and circumstances are exactly identical in both the years and hence, by way of this common order these appeals are being disposed off.

4. Brief facts relating to assessment year 2012-13 in IT(TP)A No.77/CHNY/2022 are that the AO while framing assessment noticed that the assessee has received dividend income of Rs.32,78,79,872/- which includes dividend of Rs.32,78,44,905/- from the investment made by assessee in the shares of Trimex Sands Pvt. Ltd., a subsidiary company. The AO noted that the assessee has claimed interest expenditure in its P&L account amounting to Rs.16,63,71,259/-. He also noted that the investment in shares of Trimex Sands Pvt. Ltd., as on 31.03.2011 was at Rs.67,50,99,900/- and the same investment was in the financial

year ending 31.03.2012. The AO noted that the funds available as on 31.03.2011 was only Rs.31,93,83,450/- and as on 31.03.2012, the availability of funds was Rs.44,25,66,430/- and this was due to increase in share capital to the tune of Rs.2,14,46,600/-. The AO observed that the interest expenses has not materially altered from Rs.17,06,44,678/- as on 31.03.2011 to Rs.16,63,71,259/- as on 31.03.2012. Accordingly the AO invoked Rule 8D(2)(ii) and disallowed interest expenses to the extent of Rs.4,80,62,722/-.

4.1 Similarly, the AO also taken average value of investment made by assessee and computed disallowance by taking 0.5% of the average value of investment under Rule 8D(2)(iii) at Rs.33,75,500/- Thereby the AO computed the disallowance u/s.14 of the Act r.w.rule 8D(2)(ii) at Rs.4,80,62,722/- and under rule 8D(2)(iii) at Rs.33,75,500/- and thereby aggregate disallowance at Rs.5,14,38,221/-. Aggrieved assessee preferred appeal before the CIT(A).

5. The CIT(A) simpliciter dismissed the ground of assessee despite the fact that the assessee before CIT(A) filed complete details of availability of funds but without going into the same, he observed that the AO has adopted the formula enacted by

legislature under Rule 8D(2) and the formula prescribes that no such ground can be taken that the assessee has more interest free funds without one to one correlation. Hence, he dismissed the assessee's ground. Aggrieved, now assessee is in appeal before the Tribunal.

6. We have heard rival contentions and gone through facts and circumstances of the case. We also noted that the assessee's interest free funds as on 31.03.2012 at Rs.78.34 crores which is excess of investment made in the shares giving rise to exempt income i.e., dividend income of Rs.32.98 crores on the investment of Rs.76.29 crores. The assessee also filed details of working capital term limit of Rs.18,17,17,947/- which was available with the assessee and the same cannot be included while computing disallowance. The assessee has given revised working for making disallowance and added that only disallowance under Rule 8D(2)(ii) will be at Rs.51,29,547/- and under Rule 8D(2)(iii) at Rs.8,79,583/- , thereby total disallowance of expenditure should be restricted at Rs.60,09,130/- as against computed by the AO at Rs.5,14,38,221/-. When these revised working was provided to the Revenue, the Id.Senior DR could not controvert the above fact situation but only requested that matter can be referred back to the file of the AO for

considering the availability of funds i.e, interest free funds available with the assessee on 31.03.2012. The relevant revised working is reproduced from the order of CIT(A) as under:-

<i>S.No.</i>	<i>Particulars</i>	<i>Amount</i>
<i>i.</i>	<i>Amount of expenditure directly attributable</i>	
<i>ii</i>	<i>Amount calculated as per formula A*B*C</i>	
	<i>Expenditure by way of interest not directly attributable "A"</i>	8,25,37,238
	<i>Total Investments : As on 01.04.2011</i>	17,59,16,568
	<i>As on 31.03.2012</i>	17,59,16,566
	<i>Average Investments "B"</i>	17,59,16,566
	<i>Total Assets : As on 01.04.2011</i>	1,82,51,55,577
	<i>As on 31.03.2012</i>	2,01,08,77,736
	<i>Average Assets "C"</i>	2,83,05,94,445
	<i>A"(B/C)</i>	51,29,547
<i>iii</i>	<i>One half percent of average investment</i>	8,79,583
	<i>Total Expenditure disallowed u/s.14A</i>	60,09,130

7. Similar are the facts in assessment year 2013-14 wherein the dividend income earned by assessee of Rs.11,21,57,467/-, which is claimed by assessee as exempt u/s.10(38) of the Act. The AO noted that there is a registered growth of Rs.23.78 crores in the share of fixed assets, current assets and in the balance sheet and increase in long term loans and advances at Rs.0.87 crores. According to AO, cumulatively the other assets mentioned above have also shown an increase of Rs.28.39 crores. Thereby argument of assessee regarding availability of interest free funds was rejected and computed disallowance under Rule 8D(2)(ii) i.e., interest disallowance at Rs.4,92,21,655/- and computed disallowance under

Rule 8D(2)(iii) i.e., average value of investment at 0.5% at Rs.44,25,610/- and aggregate disallowance was made at Rs.5,36,47,265/-. The AO after giving rebate of already disallowed amount by the assessee of Rs.36,12,589/- restricted the balance addition at Rs.5,00,34,676/-.

8. Similarly in this year also, the assessee contended that own funds available with the assessee of Rs.114.93 crores was sufficient to meet the investment which stood at Rs.100.72 crores and this fact can be verified from the balance sheet for financial year 2012-12 relevant to assessment year 2013-14. This fact was brought to the notice of the CIT(A) by assessee. But the CIT(A) rejected the claim of assessee and observed similar findings which is part of para 7.1.1 and for the sake of clarity, it is being reproduced as under:-

The appellant relied on the decision of the ITAT Chennai in the case of EIH Associated Hotels Limited vs. Deputy Commissioner of Income Tax (Chennai Tribunal) ITA No. 1624/Mds/2012 and the decision of the Bombay ITAT in the case of Gareware Wall Ropes Ltd vs. Additional Commissioner of Income Tax ITA No.5408, 4597/Mum/2012. The AO did not accept the explanation of the appellant. He found that during the year current assets have registered growth of Rs.23.78 crores, fixed assets have registered growth Rs.3.74 crores and long term loans and advances has shown an increase of Rs.0.87 crores. Cumulatively, the other assets mentioned above have shown an increase of Rs.28.39 crores. The increase in profits could also have gone into these assets. The assessee has not maintained separate accounts and this is a case of mixed borrowed funds and hence it cannot be said that the investments were made out of cash profit of the year. According to the AO,

the case laws relied on would not support the appellant's case. In the appellant's case a finding has been made on the basis of the financials that expenditure was incurred for earning tax-free income and therefore the said case law relied upon by the assessee is not applicable. With regard to the decision of the ITAT Chennai in EIH Associated Hotels Ltd., the AO observed that the decision of the ITAT Chennai was not accepted by the Department and an appeal is pending before the Hon'ble High Court and that the appellant has not demonstrated as to how the investment has been made in Trimex Sands Pvt. Ltd is on account of business expediency. The AO therefore computed the disallowance as per Rule 8D and determined the amount to be disallowed u/s 14A at Rs.5,36,47,265/-. After deducting the amount already disallowed by the appellant of Rs.36, 12,589/-, the AO made the disallowance on the difference of Rs.5,00,34,676/- u/s 14A which is being disputed in this appeal.

9. After going through the facts in entirety, we noticed that as regards to disallowance in both the years, the assessee is having more interest free funds than the investments. As regards to assessment year 2012-13, the assessee has given revised computation and already made suo-motto disallowance of Rs.51,29,547/- before CIT(A). But as regards to assessment year 2013-14 is concerned, the assessee's interest free funds available is at Rs.114.93 crores as against which investment giving rise to exempt income stood at Rs.100.72 crores.

10. Hence, for assessment year 2012-13, we direct the AO to restrict the disallowance of interest expenses under Rule 8D(2)(ii) at Rs.51,29,547/- and in assessment year 2013-14, no disallowance

should be made. As regards to value of investment under Rule 8D(2)(iii) i.e., 0.5% of average value of investment for the assessment year 2012-13, disallowance should be restricted at Rs.8,79,583/- and for assessment year 2013-14, it should be restricted to the extent of amount already disallowed by the assessee at Rs.36,12,589/-. We direct the AO accordingly.

Assessee's Appeal in ITA No.993/CHNY/2022, AY 2009-10:-

11. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in making disallowance of interest claim made by assessee and disallowed on the ground of diversion of borrowed funds used for the purpose of non-business purposes. For this, assessee has raised various grounds i.e., ground Nos. 2 to 2.9, which are exhaustive, argumentative and factual and hence, need not be reproduced but will be considered while adjudicating the issue.

12. Briefly stated facts are that the AO on perusal of profit & loss account and balance sheet of the assessee noted that there was substantial increase in quantum of secured loans and unsecured loans during the relevant financial year 2008-09 relevant to assessment year 2009-10. The AO noted the details of total loans

including secured and unsecured loans as on 31.03.2008 were Rs.55.47 crores, whereas the same have been increased to Rs.109.02 crores as on 31.03.2009. Further, he noted from the Schedule of Financial Charges that assessee has paid interest on term loan of Rs.2.01 crores and interest of working capital loan of Rs.11.07 crores compared to last year's of Rs.1.36 crores and Rs.5.10 crores respectively. According to AO in view of the above, the assessee had made substantial borrowings and paid huge interest in respect of the same which has been claimed as business expenditure amounting to Rs.3,30,08,590/-. Hence, he required the assessee to explain as to why the interest pertaining to the above interest free advance given to subsidiaries or sister concern i.e., investment shown in Trimax Sands as on 31.03.2009 at Rs.57 crores, donation paid of Rs.5 crores to Sri Sathya Sai Medical Trust on 04.08.2008, advance made to Pradeep Shipping of R.34,16,061/- on 28.02.2009 and interest claimed on the same to be disallowed. The assessee vide letters dated 11.02.2013, 14.02.2013 and 18.02.2013 submitted explanation. The AO after considering the reply of the assessee noted that the assessee has paid huge interest of Rs.17,01,69,396/- and this interest includes major payment of interest to the following:-

Interest-Term Loan-HDFC loan – Rs.1,30,78,318/-
Interest on cash credit – Rs.9,19,29,044/-

Therefore, the AO worked out disallowance of interest at 12% per annum on the interest free loans given to its sister concern, advance made to Pradeep Shipping and also donations paid to Sri Sathya Sai Medical Trust and therefore, he computed disallowance at Rs.3,30,08,590/- as under:-

“In respect of loans and advance made to Pradeep Shipping, since the major payment of Rs.34,16,061/- is made during the year on 28th February, 2009 and after that no payment received from said party the disallowance of interest at the rate of 12% works out to Rs.34,160/-. Thus, the total amount of Rs.3,30,08,590/- (Rs.41,39,113 + Rs.2,88,35,317 + Rs.34,160) is disallowed out of the interest expenditure claimed by the assessee as the expenditure not incurred for the purpose of the business.”

Aggrieved, assessee preferred appeal before CIT(A).

13. The CIT(A) confirmed the action of the AO in disallowing the interest to the extent of amount advanced to its sister concern, Pradeep Shipping and donation made to Sri Sathya Sai Medical Trust by observing in para 6.3.3. to 6.3.5 as under:-

“6.3.3 To consider the allowability of the interest on borrowed capital, it is necessary to find out the use of the borrowed funds and to see whether the borrowed funds were used for the purpose of business of the assessee. Considered in this angle, it can be easily inferred that the donation of Rs.5 Cr. to Sri Sathya Sai Medical Trust cannot be considered as made for the purpose of appellant's business. It is a donation made. The appellant has submitted that it was made out of interest free funds available. But for the

donation, the appellant would have reduced its borrowing by Rs.5 cr. and avoided interest thereon. I therefore hold that the donation to Sri Sathya Sai Medical Trust was made out of borrowed funds only and the interest attributable to the said donation cannot be allowed as a deduction u/s 36(1)(i1) of the Act as capital employed in the business. I therefore sustain the addition of Rs.41,39,113/- made by the AO in this regard and dismiss the grounds raised.

6.3.4 With regard to the investment of Rs.57 cr. in M/s Trimax Sands Pvt. Ltd, the contention of the appellant is that the investment was made for the purpose of business. Trimex Sarnds Pvt. Ltd is a subsidiary company of the assessee incorporated for the purpose of setting up a beach sand project. Though the appellant is claiming that the investment in the subsidiary company was for the purpose of business, the appellant was not able to adduce any evidence as to how the investment in the subsidiary company setting up beach sand project would improve the appellant's business in processed minerals. Even otherwise it is an investment in another company and cannot be considered as amount used for the purpose of the appellant's existing business. The interest on loan borrowed for making the investment in the subsidiary company should have been capitalized and added with the investment in the subsidiary company. As the appellant failed to establish any nexus between the investment in subsidiary and the business of the appellant, the amount advanced cannot be considered as amount used for the purpose of business of the appellant. I therefore confirm the disallowance made by the AO for the reasons given by him in the assessment order.

6.3.5 Regarding the advance made to Pradeep Shipping of Rs.34,16,061/-, the AO had taken into account the amount transferred and has taken into account the fact that the major payment of Rs. 34,16,061/- was made during the year on 28th February 2009 and after that no payment received from said party, the AO made disallowance of Rs.34,160/- only. This disallowance is also sustained as the AO has duly considered the transfer of funds.

Aggrieved, now assessee is in appeal before the Tribunal.

14. We have heard rival contentions and gone through facts and circumstances of the case. Before us, the Id.counsel for the assessee explained that the investment of Rs.57 crores made by assessee in Trimex Sands is for the purpose of business because Trimex Sands being a subsidiary company of assessee engaged in the business of beach sand project and this is expansion of the business of the assessee and hence, this advance given to Trimex Sand amounting to Rs.57 crores is for the purpose of business. As regards to donation given to Sri Sathya Sai Medical Trust, it was out of the mixed fund out of the capital available with the assessee because the opening balance available with the assessee is 55.14 lakhs and during the year credits in the account relating to various expenditure is Rs.26.41 lakhs. Hence, no disallowance on account of interest paid on donation of Rs.5 crores can be disallowed because funds have given from interest free capital available with the assessee. As regards to interest free advances given to Pradeep Shipping, the assessee contended that this is subsidiary of the assessee company engaged in the business of handling and stevedoring and other shipping services. The assessee explained the nature of business of the assessee that includes sand mining and shipping business, which the subsidiary company is also doing. The assessee explained this fact from the copy of ledger account

that the subsidiary incurred expenditure at harbor and other places on behalf of assessee company. Hence, the Id.counsel before us now stated that the assessee's advance free loan to subsidiaries is for the purpose of business and hence, the same should have been allowed. We noted that the assessee is able to prove that the assessee's subsidiaries namely Pradeep Shipping Pvt. Ltd., and Trimex Sands Pvt. Ltd., both are subsidiaries and engaged in the business as that of the assessee and it is called the expansion of business. Even in these subsidiaries and that of the assessee, there is common management and unity of control is there. Once this fact is there, the Revenue cannot disallow the interest expenditure because it is incurred for the purpose of business. Hence, we allow the interest and direct the AO accordingly. The appeal of the assessee is allowed.

Revenue's Appeal in ITA No.1035/CHNY/2022, AY 2009-10

15. The first issue in this appeal of Revenue is as regards to the order of CIT(A) deleting the addition made by AO/TPO towards adjustment on account of transfer pricing relating to barite-lumps. For this, Revenue has raised the following grounds:-

2. On the facts and circumstances of the case, the learned CIT(A) has erred in deleting the addition of Rs. 3,16,27, 440/- made towards adjustment on account of transfer pricing relating to barite-Lumps.

2.1 The Ld. CIT(A) has failed to note that the adjustment was done by the AO as per the relevant provisions of the Act / Rules, taking into account all the comparability characteristics prescribed.

16. Brief facts are that the assessee is a private limited company produced minerals like Feldspar and also procures Barites, Bentonite, etc., from the mine owners, processes them to suite the requirement of the customers, transports them to the nearest port by rail and/or road, arranges export to overseas customers on FOB basis. The TPO noted that the assessee has adopted Internal cost plus method for the sale of barite lumps whereas for other items, the assessee has adopted CUP method as the most appropriate method to arrive at Arm's length price. The TPO noted that the assessee has made sales to UAE and computed gross margin between AE and non-AE as tabulated below:-

No.		AE	Non-AE
1	Sales	32,13,53,029	16,35,13,372
2	Material Cost	17,51,05,954	9,74,15,975
3	Direct Expenses	7,35,94,440	1,77,89,231
4	Gross Profit 1-(2+3)	7,26,53,635	4,83,08,166
5	Mark up on cost	29.21%	41.93%

The TPO required the assessee to show-cause as to why the mark-up @ 41.93% why should not be taken up as markup on cost for the

transaction with AE. The assessee vide reply dated 07.01.2013 and 17.01.2013 and during personal hearing on 10.01.2013 explained that the assessee is in the business of exports and invoices has been raised in US dollars. Hence the conversion rate at the particular time of export plays a major role in increasing or decreasing profit percentage and it has given the complete details of price realized from its export to AE, which was in the range of US \$ 48.50 to 52 in the first four shipments whereas the conversion rate is in the range of Rs.39.80 to Rs.45.38. The assessee submitted the details of exports to AE as under:-

<i>Shipment date</i>	<i>18.04.2008</i>	<i>08.06.2008</i>	<i>08.06.2008</i>	<i>09.08.2008</i>
<i>Quantity exported</i>				
<i>Rate in USD</i>	<i>50</i>	<i>48.5</i>	<i>49</i>	<i>52</i>
<i>Rupee Conversion</i>	<i>39.8</i>	<i>42.92</i>	<i>42.29</i>	<i>45.38</i>
<i>Sale price in Rs after conversion</i>	<i>1990</i>	<i>2081.62</i>	<i>2072.20</i>	<i>2359.76</i>

The assessee also explained that the sale with uncontrolled entity realized was at Rs.48.42, whereas none of the above 4 shipments to AE's realized even close to the same and the maximum was Rs.45.38. It was contended that the reason for better mark up against the cost of third party is solely due to foreign currency realization but the TPO computed the ALP by adopting Rs.41.93% as gross margin by making a mark up on cost to the controlled

transactions and thereby computed the ALP of the transaction at Rs.35,29,80,469/- and the difference pointed out was Rs.3,16,27,440/-. The AO accordingly framed assessment by disallowing transfer price adjustment of Rs.3,16,27,440/- to the returned income of the assessee. Aggrieved, assessee preferred appeal before CIT(A).

17. The CIT(A) deleted the addition by observing that the TPO has proceeded to compute the margins of AE with non-AE to whom there is only a single export transaction made post increase in the price and so the CUP treated by TPO is not exact one. For this, he observed in para 5.3 as under:-

“5.3 I have gone through of the case of the appellant on this issue and considered the arguments of the AR. The TPO has ignored the submission of the appellant and not considered the increase in procurement price demonstrated by the appellant. Accordingly, the TPO has proceeded to compare the margins of AE with Non-AE, to whom there is only single export transaction made post increase in the price and so the single CUP chosen by the TPO is not appropriate one. The TPO has not taken into consideration the submissions made by the appellant demonstrating the effect of foreign exchange fluctuation on the rate charged for the sale transactions to the AE and Non-AE. The sale price to Non-AE at USD73 is not much significantly different from the sale price to the AE compared to the volume of transactions with AE. The arguments of the AR have much force which have not been rebutted by the TPO. In view of the above reasons, the adjustment of Rs.3, 16,27,440/- on account of transfer pricing made by the TPO is not sustainable and so the TP adjustment is deleted.”

Accordingly, the CIT(A) deleted the TP adjustment proposed by TPO and added by CIT(A). Aggrieved, Revenue is in appeal before the Tribunal.

18. We have heard rival contentions and gone through facts and circumstance of the case. We noted that apart from the above difference pointed out by CIT(A) in his order that the single transaction adopted by TPO for comparing the AE and non-AE transactions for which CUP method is applied. Apart from this, we noted from the sheet that the mark up cost for transaction with AE is 40.16% as against 41.93% with non-AE. This difference is within the range of +/- 5% variations allowed under the second proviso to sub-section (2) of section 92C of the Act. Once this is a fact, we find no infirmity in the order of CIT(A) and hence, we confirm the same. This issue of Revenue's appeal is dismissed.

19. The next issue in this appeal of Revenue is as regards to the order of CIT(A) deleting the disallowance of expenses made by AO by invoking the provisions of section 40(a)(ia) of the Act for non-deduction of TDS on compensatory charges. For this, Revenue has raised following ground No.3:-

3. The learned CIT(A) erred in deleting the disallowance made u/s. 40(a) (ia) of the IT Act on the compensatory charges paid by the assessee without deduction of tax at source and without appreciating the fact that the compensatory charges were paid in lieu of the credit period availed from the suppliers, as per the agreement and as such the payments would partake the character of "interest" and requires deduction of tax u/s.194A of the IT Act.

20. Brief facts are that the AO on perusal of tax audit report noted that the assessee has paid a sum of Rs.24,44,193/- to Empire Mineral and Transport on account of plot rent. According to AO, the assessee has not deducted TDS on the above amount. Hence, he invoking the provisions of section 40(a)(ia) of the Act, made disallowance of Rs.26,44,193/- and added to the total income of the assessee. Aggrieved, assessee came in appeal before the CIT(A).

21. The CIT(A) has gone into the submissions of the assessee and noted that the facts recorded by AO are not correct as the assessee procures barite lumps from Andhra Pradesh Mineral Development Corporation (APMDC) for the purpose of its trading. The supplier initially agreed for interest free credit for a period of 90 days. Thereafter it has renegotiated the supplies for either cash or payment of interest for the credit period enjoyed by the assessee. The assessee has paid a sum of Rs.26,44,193/- as compensation charges for the credit period obtained by it. This amount was

debited by the assessee under the interest. The assessee further stated that the payment made to APMDC is compensatory in nature but not interest as contemplated u/s.194A for the purpose of deduction of tax at source as held by AO. The assessee relied on the decision of Co-ordinate Bench of Ahmedabad Tribunal in the case of ITO vs. Parag Mahasukhalal Shah, [2011] 12 taxman.com 37 (Ahd-ITAT), wherein it was held that

“When a payment is compensatory in nature and not related to any deposit/ debt/ loan then such a payment is out of ambits of provisions of section 194A. In this case, the assessee was allowed interest free credit for a period of 60 days. In case of overdue payment cost of Purchase was paddled with a liability to pay a Compensatory sum which was termed as interest.

It was further held that the compensatory payment had a direct link and immediate nexus with the trade liability being connected with delayed purchase payment, It did not fall within the category of interest as defined in section 2(28) (A) for the purpose of deduction of tax at source as per the provisions of section 194A.”

In view of the above, the Id.counsel for the assessee stated that these payments being compensatory in nature, the CIT(A) deleted the disallowance by observing in para 8.3 as under:-

“8.3 Following judicial discipline of jurisdictional ITAT’s order on the very same issue in the case of very same assessee for the AY 2007-08, I delete the addition made by the AO. The grounds in this regard are allowed.”

Aggrieved, Revenue came in appeal before the Tribunal.

22. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that the payments made to APMDC is clearly in the nature of compensatory and these cannot be called as interest which are contemplated in the provisions of section 194A of the Act, for the purpose of deduction of TDS. Hence, we find no infirmity in the order of CIT(A), who has rightly deleted the disallowance and we confirm the same. Accordingly, this appeal of the Revenue is dismissed.

Revenue's Appeal in ITA No.1120/CHNY/2022, AY 2013-14

23. The only issue in this appeal of Revenue is against the order of CIT(A) deleting the addition made by AO/TPO towards adjustment on account of transfer pricing relating to barite-lumps. For this, Revenue has raised the following grounds:-

2. On the facts and circumstances of the case. the learned CIT(A) has erred in deleting the addition of Rs. 2,18,07,420/- made towards adjustment on account of transfer pricing relating to barite-Lumps.

2.1 The Ld. CIT(A) has failed to note that the adjustment was done by the AO as per the relevant provisions of the Act/ Rules, taking into account all the comparability characteristics prescribed.

24. Since we have already decided this issue for the assessment year 2009-10 in ITA No.1035/CHNY/2022 in preceding para 18, taking a consistent view we find no infirmity in the order of CIT(A)

and hence, we confirm the same. This issue of Revenue's appeal is dismissed.

25. In the result, the appeals filed by the assessee in ITA Nos.77 & 78/CHNY/2022 are partly-allowed & ITA No.993/CHNY/2022 is allowed and both the appeals of the Revenue in ITA Nos.1035 & 1120/CHNY/2022 are dismissed.

Order pronounced in the open court on 11th October, 2023 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 11th October, 2023

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. निर्धारिती/Assessee
2. राजस्व/Revenue
3. आयकर आयुक्त /CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.

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