

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A', NEW DELHI**  
BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
AND  
SHRI SUDHIR KUMAR, JUDICIAL MEMBER

ITA No.1493/Del/2018

Assessment Year: 2013-14

ITA No.1494/Del/2018

Assessment Year: 2014-15

ITA No.1495/Del/2018

Assessment Year: 2015-16

ITA No.4650/Del/2018

Assessment Year: 2013-14

<b>M/s Bhushan Steels Ltd. Bhushan Centre, Hyatt Regency Complex , Bhikaji Cama Place, New Delhi PIN: 110066 PAN No.AAACB1247M</b>	<b>Vs.</b>	<b>ACIT Central Circle -3 New Delhi</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	<b>Mrs Kavita Jha, Sr. Advocate Sh. Ashok Shukla, Advocate &amp; Sh. Deeraj Kumar, CA</b>
Respondent by	<b>Sh, Javed Akhtar, CIT DR</b>

Date of hearing:	28/11/2024
Date of Pronouncement:	08 /01/2025

**ORDER**

**PER SUDHIR KUMAR, JUDICIAL MEMBER:**

All these appeals filed by the assessee are directed against the common order of the Commissioner of Income Tax

(Appeals)-23, New Delhi [hereinafter referred to as “CIT(A)”] vide order dated 29-12-2017 pertaining to assessment years 2013-14, 2014-15 & 2015-16 and 2013-14 arise out of the assessment order dated 30.12.2016 under section 153(A) r.w.s. 143(3) of the IT Act, 1961 of the Income Tax Act 1961 [hereinafter referred as ‘the Act’] where the appeal no.4650/Del/ 2018 is against the order of the penalty passed by the Assessing Officer.

2. Since, the issues are common and connected, these appeals are being disposed of by this common order for the sake of convenience. Grounds of appeals taken by the assessee are common in all the three years except the difference of amount. The grounds taken in the appeal being ITA No.4650/Del/2018 for assessment year 2013-14 are under:

1. Ground 1: The learned CIT(A) erred in passing penalty order under section 271(1)(c) of the Act

1.1 On the facts and in circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals)-23, New Delhi (hereinafter referred to as "the Id. CIT(A)") has erred in passing an order under

section 271(1)(c) of the Act, for the assessment year 2013-14 levying a penalty of Rs. 1,46,07,91,000/-.

1.2 The Id. CIT(A) ought to have appreciated that the penalty proceedings are independent of the assessment proceedings and the contentions raised by the Appellant are to be considered afresh as assessment and penalty proceedings are governed by an entirely different set of circumstances, parameters, legal provisions and legislative interpretations.

1.3 The Ld. CIT(A) has erred in the not appreciating the fact that, the criteria and yardstick for the purpose of imposing penalty under section 271(1)(c) of the Act, are vastly different from those applied for making or confirming the additions.

1.4 On the facts and in circumstances of the case and in law, the Id. CIT(A) ought to have appreciated the addition made and conclusions drawn are not only highly debatable but also extremely contentious and not of a nature as to establish conclusively the act of either concealment of income or furnishing inaccurate particulars of income by the Appellant.

## 2. Ground 2: Levy of penalty in respect of enhancement of income

2.1 The Id. CIT(A) has erred in rejecting the books of accounts, estimating the income and enhancing the same by Rs. 380,94,97,963/- by applying the best judgement method under section 144 of the Act and using the Gross Profit/Net Profit rate of Tata Steel Ltd

(which operates and functions in entirely different conditions).

The Id. CIT(A) conclusions are based on suspect logic, erroneous interpretation of facts and incorrect interpretation of law whereby the conditions, precedent justifying the levy of penalty for any of the limbs specified in section 271(1)(c) of the Act are absent;

2.2 The Id. CIT(A) has failed to appreciate the fact that the additions, which form the basis for levy of penalty, have been made on an estimated basis which process itself being prone to wide variations being dependent on individual mind frames and though processes is not even suggestive or fulfillment of conditions under section 271(1)(c) of the Act to justify levy of penalty;

2.3 The Id. CIT(A) has failed to appreciate the fact that, the penalty has been levied on the basis of rejection of the books of accounts which action is itself highly unjustified considering various relevant facts of the case including its past history and the fact that the Appellant maintains proper and regular books of accounts which are duly audited and operates in a regulated scenario requiring compliance with a diverse set of statutes and legislations;

2.4 The Id. CIT(A) has failed to appreciate the fact that, there is no evidence of mala-fide intention, contumacious conduct or presumption of guilty mind which are essential ingredients for any penal action u/s 271(1) of the Act;

2.5 The Id. CIT(A) has failed to appreciate the fact that, the entire premise for the action of the Ld Assessing Officer, conclusions drawn, and the addition made are being contested in appellate proceedings before the Hon'ble Income Tax Appellate Tribunal and a verdict on the same is still pending whereby no definite conclusion can be drawn as to either concealment of income or furnishing inaccurate particulars of income at this stage itself.

3. Ground 3: Levy of penalty in respect of Zinc and transport expense

3.1 The Id. CIT(A) has erred in computing the penalty on this issue even though it is stated in the order that penalty is to be levied only on the income enhanced under CIT(A) order.

3.2 The Id. CIT(A) has erred in levying penalty on addition /disallowance of Rs. 48,82,10,037/- (comprised of alleged bonus Zinc purchased from M/s Hindustan Zinc Limited of Rs. 47,96,05,498/- and transport expense paid to M/s Mewat Transport Company of Rs. 86,04,539/-) while computing the income under the normal computational provisions of the Act.

3.3 The Id. CIT(A) has failed to appreciate that, the Appellant has with the object to putting an end to protracted litigation had opted for settlement before the Customs and Central Excise Department and the same cannot become basis for levy of penalty under section 271(1)(c) of the Act.

#### 4. Ground 4: Levy of penalty in disallowance under section 14A of the Act

4.1 The Id. CIT(A) has erred in computing the penalty on this issue even though it is stated in the order that penalty is to be levied only on the income enhanced under CIT(A) order.

4.2 The Id. CIT(A) has erred in levying the penalty on the taxes alleged to be evaded due to disallowance under section 14A of the Act, without appreciating the fact that additions made were in the nature of disputed matter on which relief was partly allowed by CIT(A).

4.3 The Id. CIT(A) has erred in levying the penalty, without establishing the concealment of income or furnishing of inaccurate particulars on the part of the Appellant.

The Appellant craves leave to add to, alter or amend, modify or delete, any or all the aforesaid grounds of appeal, if and when necessary.

All the aforesaid grounds of appeal are without prejudice to on another.

3. The brief facts of the case are that the assessee company has filed return of income for the three assessment years 2013-14, 2014-15 & 2015-2016. A search and seizure operation under Section 132 of the Act was conducted in the case of the assessee company and its group concerns and

residential/factory premises of partners, directors and proprietors of the group on 13-06-2014. A notice under Section 153A of the Act was issued to the assessee company. In the response to the notice, the assessee company has filed the return of income and the Assessing officer made the addition for the all three assessment years. The penalty proceedings against the assessee company were also started for the assessment year 2013-14.

4. Aggrieved with the order of ld. Assessing officer, the assessee company filed the appeal before the Ld. CIT(A), who vide his order dated 29-12-2017 dismissed the appeals against which the assessee company is in further appeal before the Tribunal.

5. We have heard the rival arguments and perused the material available on record.

6. Learned counsel for the assessee has submitted that since the National Company Law Tribunal (NCLT) is seized of the proceedings initiated under section 7 of the Insolvency and Bankruptcy Code, 2016 and has already approved a resolution plan and granted the

moratorium in respect of any other proceedings pending before any authority or tribunal etc., the present appeals cannot be taken for further adjudication. She submitted that the appeals filed by the revenue against the assessee have been dismissed for the above assessment years, by this Tribunal vide order dated 14<sup>th</sup> June 2024.

7. In the written submission, she has stated that the claims of the Income Tax department were restricted to Rs 67,01,95,070/- as per the information memorandum and the resolution plan. Reliance has been placed on the ratio mentioned in the decision in the case of *Ghanashyam Mishra & Sons (P). Ltd. vs. Edelweiss Asset Reconstruction Co. Ltd.* [2021]126 taxmann.com 132 (SC).

8. Learned Departmental Representative for the Revenue could not convert the factual position brought on record by the assessee. He, thus submitted that the appeal cannot be decided on this juncture on merits and the Assessing Officer has to take necessary steps to include itself as secured creditor before the Hon'ble NCLT against the tax liability arising in the present case. We have also perused the submissions advanced by both sides in the light of relevant provision under the Act as well as IBC Code. Section 14 of IBC Code is very clear on the aspect that once moratorium is drawn

and the insolvency commencement date is declared any institution of suits or definition of pending suits or proceedings against the creditor, debtor (in the present facts of the case of assessee before us) including the execution of any judgment, decree, or order in any Court of law, Tribunal, Arbitration Resolution Plan/Process has been accepted by the NCLT. At this juncture, we refer to the decision of Hon'ble Supreme Court in the case of Ghanshyam Manz Retails Pvt. Ltd. Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Co. Ltd. reported in (2021) 126 Taxmann.com 132 wherein the Hon'ble Supreme Court has considered a situation wherein, the resolution plan was approved by the adjudicating authority under Section 31(1) of the IBC Code. Hon'ble Supreme Court observed that, once the resolution plan was drawn, the claim as provided in the resolution plan stood frozen, and will be binding on the corporate debtor, its employee, its members, creditors, Central Government and any State Government or legal authority, guarantor and other stakeholders. We also note that in the present facts of the case, the resolution plan is yet to be finalized. When, we read the newly inserted provisions of Section 156A of the Act, it is

necessary to remand the appeal to the Ld. AO to take necessary steps/action as per Rules.

9. Our above order applies mutatis mutandis to all the assessment years in appeal.

10. Hence, in the above circumstances, we deem it fit and proper to remand these appeals back to the Ld. Assessing Officer to take necessary steps as per Section 156A of the Act. Accordingly, we partly allow the appeals filed by the assessee.

11. In the result, the appeals of the assessee are allowed for statistical purpose.

**Order pronounced in the open court on 08.01.2025.**

**Sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER**

**Sd/-  
(SUDHIR KUMAR)  
JUDICIAL MEMBER**

\*Mohan Lal\*

Dated: 08.01.2025

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(Appeals) `
- 5.DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI