

आयकर अपीलीय अधिकरण “ए” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.2519/PUN/2017
निर्धारण वर्ष / Assessment Year : 2013-14

Assistant Commissioner of Income Tax,
Jalna Circle, Jalna

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Gajalaxmi Steel Pvt. Ltd.,
P. No. F-4, Phase-II, Addl. MIDC Area,
Aurangabad Road, Jalna-431203

PAN : AACCG0547R

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.N. Puranik
Revenue by : Shri Deepak Garg

सुनवाई की तारीख / Date of Hearing : 18-03-2021
घोषणा की तारीख / Date of Pronouncement : 24-03-2021

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the Revenue against the order dated 02-08-2017 passed by the Commissioner of Income Tax (Appeals)-1, Aurangabad [‘CIT(A)’] for assessment year 2013-14.

2. The only issue is to be decided is as to whether the CIT(A) justified in deleting the addition made on account of suppressed production on the basis of electricity consumption in the facts and circumstances of the case.

3. The brief facts of the case are that the assessee is a company engaged in the business of manufacturing of MS Billets. The said MS Billets are mainly used by Re-Rolling Mills for manufacturing of MS Bars. The main raw materials are sponge iron and MS Scrap. During the course of hearing, the assessee was asked to furnish the details of raw materials consumption, finished goods, consumption of electricity and unit consumption per MT with its month-wise details, in response to which the assessee furnished the details which are reproduced in Page No. 6 of the assessment order.

4. After verification of the said production details the AO worked out the average month-wise sale and purchase and also month-wise consumption of raw material and electricity. He analyzed the facts and figures from the month-wise of electricity consumption and opined the electricity consumption was lowest in the month of February, 2013 at 1141 Units PMT and it was highest in the month of April, 2012 at 1368 Units PMT. The AO asked the assessee to show cause as to why the basis of production should not be adopted at 1026 Units PMT as adopted by the Directorate General of Central Excise Intelligence (DGCEI). In response the assessee contended that the electricity consumption varies only due to some special circumstances. The variation may be due to various factors in the manufacturing process and the quality of raw material available with

the assessee and the variation may be due to that the assessee consumed raw material as old scrap lying with it for year or so, which consumed electricity units at large and the electricity is consumed in large proportions. The said submissions were found not acceptable to the AO and accordingly, excess consumption of electricity was made basis for estimating the gross profit and net suppressed production to an extent of Rs.7,65,23,877/- was added to the total income of the assessee. The assessee challenged the order of AO before the CIT(A), the contention of which are reflected in Page No. 3 of the impugned order. It was also pleaded before the CIT(A) the similar issue was the subject matter before the ITAT, Pune Benches in the cases of M/s. Nilesh Steel & Alloys Pvt. Ltd. and Bhagyalaxmi Steel Alloys Pvt. Ltd. Considering the same, the CIT(A) deleted the addition made on account of suppressed production.

5. The ld. DR, Shri Deepak Garg relied on the order of AO.

6. The ld. AR, Shri S.N. Puranik referred to an order dated 19-09-2019 passed by this Tribunal in assessee's own case for A.Y. 2014-15 in ITA No. 1434/PUN/2018 at Page No. 3 of the paper book and argued that the AO without having any supporting material for estimating the gross profit, and the addition made thereon on account of suppressed production is bad under law. He relied on the order of ITAT in assessee's own case and referred to Para No. 7. We note that the AO considered the manufacturing process of assessee in detailed manner and noticed that the electricity was one of the major cost input in the manufacturing, also accounted for major share of expenditure. He found huge deviation in the electricity

consumption and presumed that the production disclosed in the books was substantially suppressed. We note that one of the reasons for rejecting the books of account by the AO was inconsistent electricity consumption and proceeded to compute the net profit of suppressed production. The AO did not give the cogent reasons for method of computing suppressed production and he went by supposition but not by actual detention which is not justified as rightly held by the CIT(A). We note that the factors responsible for variation in electricity consumption has been explained by the assessee in his detailed written submissions before the AO which are reflected in Page No. 7 of the assessment order and Page No. 3 in the impugned order. As pointed by the CIT(A) in his order at Page No. 8 that this Tribunal held the consumption of the electricity for the manufacturing of mild steel ingots/billets depend on various factors like quality of raw material which was the major input, voltage of the supply, power interruptions, mechanical and electrical breakdowns and the chemical composition of the liquid metal. In the present case having explained all the above in assessment proceedings, the AO failed to appreciate these facts and did not attempt to establish a direct nexus between the production and electricity consumed for the manufacturing and arrived at a conclusion that there was an excess consumption of electricity resulting in suppressed production, in our opinion, has no basis for computing alleged suppressed production on estimation.

7. Further, in assessee's own case as relied by the Id. AR at Page No. 3 of the paper book we note that this Tribunal in Revenue's appeal held the

order of CIT(A) is fair and reasonable on the issue where the AO proceeded to estimate the net profit on alleged suppressed production. The relevant portion in Para Nos. 7 to 9 in ITA No. 1434/PUN/2018 is reproduced here-in-below :

“7. We heard both the sides on this issue and perused the facts and orders of the revenue authorities and the decision of the Tribunal placed before us. Considering the same, we find there is no dispute on the fact that the Assessing Officer made addition based on the estimation with reference to the consumption of electricity. This is a case where the DGCEI scrutinized the accounts of the assessee. We further find on similar facts in the case of Bhagyalaxmi Steel Alloys Pvt. (supra), the relief was granted by the Tribunal to the assessee. Aggrieved with the said relief granted by the CIT(A), the Revenue filed the present appeal informing that the Revenue already filed an appeal before the Hon’ble Jurisdictional High Court for the earlier assessment years and, therefore, this is the intention of the Revenue to file the present appeal is to keep the issue alive on this issue .

8. Considering the same, in our view, such reasons for filing the appeal is unsustainable. Further, we perused the order of the CIT(A) and find the contents of para 5 of the order of the CIT(A) are relevant in this regard and the same are extracted hereunder :-

“5. Since the facts were identical to that of the case decided by the Tribunal, therefore, following the decision of the Coordinate Bench of the Tribunal in the case of Bhagyalaxmi Steel Alloys Pvt. Ltd. ITA Nos.1292/PN/2012 and in absence of any contrary material brought to its notice, the grounds raised by the Revenue were dismissed by the ITAT, Pune and the addition sustained by the CIT(A) was also deleted. Accordingly the appeal of the Revenue was dismissed. Reverting back to the present case, the Assessing Officer had made the addition of Rs.4,38,86,292/- on the basis of wrong presumption/assumptions. I find it quite baffling that the A.O. had levelled the allegation of unrecorded sales against the appellant company on the basis of some mathematical exercise without any corroborative evidence on record. This allegation of the A.O. has remained unsubstantiated and it is nothing more than a sweeping statement. The production of the assessee company is liable to Central Excise Duty and hence, the assessee has also maintained records and register as prescribed under Central Excise Act. Considering the judicial ratios, it is clear that no addition can be made merely on basis of electricity consumption formula. This view is also supported by the decisions of various Tribunals such as Janta Tiles Vs. ACIT (66 TTJ 695) (Jurisdictional Pune Bench); DCIT Kolapur Vs. J. D. Thote Dairies (Jurisdictional Pune Bench in ITA No 115/PN/2000 decision dated 31/05/2011); Roop Niketan Vs. ACIT (90 TTJ 1097) (Mumbai Bench) and ITO Vs. Gurubachansingh Juneja (55 ITD 75). Respectfully following the above decisions and the facts & circumstances of the present case, I direct the AO to delete the addition of Rs.4,38,86,292/- made by him. This ground of appeal is accordingly allowed.”

9. Considering the above and following of rule of consistency, we are of the opinion that the order of the CIT(A) is fair and reasonable on this issue and it does not call for any interference. Thus, the relevant grounds raised by the Revenue are dismissed.”

8. In the light of the above, the addition made on account of suppressed production on the basis of electricity consumption is liable to be deleted. Therefore, we find no infirmity in the order of CIT(A) and it is justified. Accordingly, the only ground raised by the Revenue is dismissed.

9. In the result, the appeal of Revenue is dismissed.

Order pronounced in the open court on 24th March, 2021.

Sd/-
(R.S. Syal)
VICE PRESIDENT

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 24th March, 2021.

RK

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Aurangabad
4. The Pr. CIT-1, Aurangabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “ए” बेंच,
पुणे / DR, ITAT, “A” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune