

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH: KOLKATA
[Before Shri M. Balaganesh, AM & Shri K. Narasimha Chary, JM]

I.T.A No. 1063/Kol/2012
Assessment Year: 2009-10

Deputy Commissioner of Income-tax, Circle-3, Kolkata. (Appellant)	Vs.	M/s. Mittal Iron Foundry Ltd. (PAN:AABCM7925Q) (Respondent)
---	-----	---

Date of hearing: 03.08.2016
Date of pronouncement: 03.08.2016

For the Appellant: Shri G. Hukuga Sema, JCIt, Sr. DR
For the Respondent: Shri K. K. Chhaparia, FCA

ORDER

Per Shri K. Narasimha Chary, JM:

This appeal by revenue is arising out of order of CIT(A)-I, Kolkata vide appeal No. 807/CIT(A)-IC-1/11-12 dated 19.04.2012. Assessment was framed by ACIT, Circle-3, Kolkata u/s.143(3) of the Income tax Act, 1961 (hereinafter referred to as the "Act") for AY 2009-10 vide his order dated 21.11.2011.

2. The sole issue involved in this appeal of revenue is against the order of CIT(A) deleting the addition of Rs.50,67,232/- made on account of shortage in the stock. For this, revenue has raised following three effective grounds:

"1. That on the facts and circumstances of the case the Ld. CIT(A) erred in deleting the addition of Rs.50,67,232/- made on account of shortage in the stock revealed in the notes in schedule 16 point no. 10 of balance sheet related to 'Significant Accounting Policies and notes on Accounts' without appreciating the fact that the assessee failed to produce the details and copy of replies(if any) submitted to Excise Department in respect of such shortage of stock.

2. That the CIT(A) has erred in deleting the addition of Rs.50,67,232/- made on account of shortage in the stock without allowing any opportunity to the A.O as per the provision of Rule 46A while admitting the additional evidence i.e. letter of the assessee to the Excise Department.

3. That the Ld. CIT(A) has erred in deleting the addition of Rs.50,67,232/- without appreciating the sanctity of 'Significant Accounting Policies and notes on Accounts' as attached to Balance sheet in this regard."

3. Brief facts of the case are that the assessee company is engaged in the business of manufacturing and selling of C.I. Casting and trading of Pig Iron. The assessee company filed its return of income electronically declaring total income at Rs.89,92,512/- for the FY 2008-09 relevant to AY 2009-10. However, the learned AO, made certain additions like

Rs.50,67,232/- towards unaccounted transactions of raw materials and finished goods, Rs. 87,668/- on account of disallowance of foreign tour expenses etc., and assessed the income of assessee at Rs. 1,42,19,990/-. Challenging the order of assessment, the assessee carried matter in appeal to the learned CIT(A), who vide the impugned order dated 19.04.2012 deleted both the above mentioned additions. Aggrieved by the deletion of Rs.50,67,232/- added by AO towards unaccounted transactions of raw materials and finished goods, Revenue carried the matter in appeal before us.

4. Learned DR argued that addition of Rs.50,67,232/- was made towards unaccounted transactions of raw materials and finished goods, such fact was revealed in the notes in schedule 16 vide point No 10 of balance sheet relating to significant accounting Policies and notes on accounts and the assessee failed to produce the details and copy of replies submitted to Excise Department in respect of such shortage of stock. His further contention is that the learned AO is not given an opportunity as provided under Rule 46A while admitting the additional evidence. For these reasons, he submits that the deletion of Rs.50,67,232/- added by AO towards unaccounted transactions of raw materials and finished goods, cannot be sustained and prayed to allow the appeal while restoring the order of assessment passed by AO.

5. On the other hand, the Ld. AR argued that the shortage in stock occurred due to the burning loss occurred in the process as well as short supplies of raw material by the suppliers. According to him, basing facts and figures learned CIT(A) reached a right conclusion on this aspect and such a finding of learned CIT(A) does not warrant any interference. Arguing thus, he prayed before us to dismiss the appeal of revenue by restoring the order of CIT(A).

6. Basing on the above contentions, the issue that arises for our consideration is whether the learned CIT(A) is justified in deleting the addition of Rs.50,67,232/- made by the learned AO towards unaccounted transactions of raw materials and finished goods?

7. We have carefully gone through the record and heard the arguments of both the sides at length. Point No 10 of schedule 16 of balance sheet relating to significant accounting Policies and notes on accounts clearly states that during the year there was a search and seizure proceedings conducted by the Excise Authorities, wherein shortage of

raw materials and finished goods (quantified by the assessee company at Rs. 50,67,232/-) was found, records and account books were taken away by the Excise Authorities. This note further establishes that the Excise authorities issued a show cause notice proposing interest and penalties in respect of the shortage of stock and removal of excisable goods without payment of duties, suppression of actual production and its unaccounted removal etc and the assessee has been pursuing the said proceedings as is evident from the copy of the letter dated 19.9.2008 addressed to the Excise authorities filed by the assessee in the paper book.

8. It could further be seen that the very basis for the learned AO to advert to the shortage of stocks in his order is the Point No 10 of schedule 16 of balance sheet relating to significant accounting Policies and notes on accounts. Except this, learned AO does not seem to have any clue on the aspect of shortage of stock or the actual extent of such shortage or the reasons therefore. Argument of the learned DR is that the learned AO sought the production of the account books and other record explaining the shortage of stock, as such, the learned AO reasonably, basing on the discrepancies found out by competent authority i.e, Excise authorities, reached a conclusion that there is every possibility of assessee had made unaccounted transaction of raw as well as finished products and made the additions. Learned AO also observed in his order that the assessee did not produce any record or account books.

9. However, the learned CIT(A) took into account the burning loss and short supplies by vendors discussed issues at length to arrive at a conclusion. Argument of the learned DR is that in all fairness, the learned CIT(A) should have given an opportunity to learned AO on all the aspects discussed in the appellate order and should have directed the assessee to produce all the additional material before the learned AO for proper assessment of the tax liability of the assessee.

10. It is evident from the above that the Excise department initiated proceedings against the assessee alleging certain amount of shortage of raw and finished material, assessee has come out with his own calculations as incorporated in Point No 10 of schedule 16 of balance sheet relating to significant accounting Policies and notes on accounts and letter dated 19.9.2008 addressed to the Excise authorities and the learned AO and the learned CIT(A) proceeded on the assumption of these figures. It is not known what had happened

to the proceedings initiated by the Excise Department. It is possible that such an authority may agree with the assessee that the shortage in the raw and finished material is not something abnormal and it was due to burning loss or short supplies. Findings in the proceedings before the Excise authorities will certainly have a bearing on the tax liability of the assessee. In the absence of such conclusion to be recorded by the competent authority to pronounce on the shortage of material, there is every likelihood of error creeping into the orders of the tax authorities. With this view of the matter, we are of the considered opinion that the matter has to be remitted back to the file of Id AO for fresh adjudication on verification of the proceedings initiated by the Excise Department in respect of the shortage of material. Hence, we set aside this issue to the file of the AO to await the decision of Excise Department and decide the issue accordingly. Therefore, the appeal of revenue is allowed for statistical purposes.

11. In the result, the appeal of the revenue is allowed for statistical purposes.

Order pronounced in the open court on 03.08.2016

Sd/-
(M. Balaganesh)
Accountant Member

Sd/-
(K. Narasimha Chary)
Judicial Member

Dated :3rd August, 2016

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. APPELLANT – ACIT, Circle-3, Kolkata
2. Respondent –M/s. Mittal Iron Foundry Ltd., 545, G. T. Road, South, Hind Apartment, Howrah-711101.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.