

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई [शिविर: मदुरै]

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI [**CAMP: MADURAI**]

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री अब्राहम पी.जॉर्ज, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.3, 933 & 847/Mds/2016

निर्धारण वर्ष / Assessment Years : 2006-07, 2008-09 & 2007-08

The Assistant Commissioner of
Income Tax,
Corporate Circle I,
Madurai.

v. M/s Aruna Alloy Steels (P) Ltd.,
Super B-3, Industrial Estate,
K-Pudur, Madurai – 625 007.

(अपीलार्थी/Appellant)

PAN : AAECA 6781 D

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. Pathlavath Peerya, CIT

प्रत्यर्थी की ओर से/Respondent by : Shri K. Ravi, Advocate

सुनवाई की तारीख/Date of Hearing : 16.02.2017

घोषणा की तारीख/Date of Pronouncement : 20.04.2017

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

All the appeals of the Revenue are directed against the respective orders of the Commissioner of Income Tax (Appeals) -1, Madurai, for the assessment years 2006-07, 2008-09 and 2007-08. Since common issues arise for consideration in all these appeals, we heard these appeals together and disposing of the same by this common order.

2. First let's take I.T.A. No.3/Mds/2016 for assessment year 2006-07.

3. The first issue arises for consideration is reopening of assessment under Section 147 of the Income-tax Act, 1961 (in short 'the Act') and non-issue of notice under Section 143(2) of the Act.

4. Sh. Pathlavath Peerya, the Ld. Departmental Representative, submitted that the CIT(Appeals) found that the Assessing Officer has not applied her mind while recording the reasons for reopening the assessment and the Assessing Officer has simply reproduced the direction of the Joint Commissioner of Income Tax in verbatim as reason for reopening the assessment. The non application of mind independently by the Assessing Officer would vitiate the reopening of assessment and subsequent reassessment order. Moreover, the Assessing Officer has not issued notice under Section 143(2) of the Act. The Assessing Officer has simply issued letters dated 17.10.2010 and 09.11.2010. According to the Ld. D.R., the very fact that the Assessing Officer recorded reasons for reopening shows that she applied her mind independently and merely because the Assessing Officer

reproduced the observation of Joint Commissioner of Income Tax it cannot be said that the Assessing Officer has not applied her mind independently.

5. The Ld. Departmental Representative further submitted that in fact, the Assessing Officer applied her mind independently. The observation made by the Joint Commissioner of Income Tax who is also an officer under the Income-tax Act, had noted that the income otherwise chargeable to tax has escaped assessment. Therefore, according to the Ld. D.R., the CIT(Appeals) is not justified in allowing the claim of the assessee. In fact, the notice issued under Section 143(2) of the Act was for the purpose of giving an opportunity to the assessee to appear before the Assessing Officer with books of account and other relevant documents. An opportunity was given to the assessee by way of letters dated 12.10.2010, 08.11.2010 and 30.12.2010. In fact, this was reproduced by the CIT(Appeals) in his order. The object of issuing of notice under Section 143(2) of the Act is complied with by the Assessing Officer by way of letters as reproduced by the CIT(Appeals). Therefore, the CIT(Appeals) is not justified in holding that the reassessment proceedings are not valid.

6. On the contrary, Shri K. Ravi, the Ld.counsel for the assessee, submitted that the income of the assessee as returned was accepted by the Assessing Officer under Section 143(1) of the Act. Subsequently, the Joint Commissioner of Income Tax, Range-III, Madurai, by a letter dated 04.01.2010, directed the Assessing Officer to take the matter under scrutiny. As per the direction of the JCIT, Range-III, Madurai, the Assessing Officer recorded the reasons for reopening. Referring to pages 2 and 3 of the order of the CIT(Appeals), the Ld.counsel submitted that the Assessing Officer by verbatim reproduced the reasons for reopening as observed by the Joint Commissioner of Income Tax. Referring to Section 147 of the Act, the Ld.counsel submitted that if the Assessing Officer has reason to believe that any income chargeable to tax escaped assessment for any assessment year, he may assess or re-assess such income which is chargeable to tax and has escaped assessment.

7. According to the Ld. counsel, the proceeding before the Assessing Officer is a judicial proceeding, therefore, the Assessing Officer himself satisfy that the income has escaped assessment. The JCIT, who is an officer higher in rank that of Assessing Officer,

cannot direct the Assessing Officer to reopen the assessment. If there was any error, a mechanism has been provided under the Act for revision. In any case, the Assessing Officer has to apply his mind independently and if he is satisfied that the income chargeable to tax has escaped assessment for an assessment year, he may assess or re-assess the income. In this case, such an exercise was not done. Therefore, according to the Ld. counsel, the CIT(Appeals) has rightly found that the reassessment is invalid.

8. Referring to notice issued under Section 143(2) of the Act, the Ld.counsel for the assessee submitted that after reopening assessment, it is a statutory requirement of the Assessing Officer to issue notice under Section 143(2) of the Act before proceeding further. Mere letters may not satisfy the requirement of the procedure prescribed under Section 143(2) of the Act. Therefore, according to the Ld. counsel, the CIT(Appeals) has rightly found that the proceeding initiated by the Assessing Officer for reassessment is not valid.

9. We have considered the rival submissions on either side and perused the relevant material available on record. From the material available on record it appears that the return filed by the

assessee was processed initially under Section 143(1) of the Act. Subsequently, the Joint Commissioner of Income Tax, Range –III, Madurai, found that income chargeable to tax has escaped assessment within the meaning and scope of Section 147 of the Act. Hence, he directed the Assessing Officer to issue notice under Section 148 for reopening. Accordingly, the Assessing Officer by verbatim reproducing reasons recorded by JCIT, reopened the assessment by issuing notice under Section 148 of the Act. For the purpose of convenience, we are reproducing the direction of JCIT, Range-III, Madurai and the reasons recorded by the Assessing Officer for reopening, as reproduced by the CIT(Appeals) in the impugned order:-

Reasons for reopening the case u/s.147 of the IT Act,1961.

Name	:	M/s. Aruna Alloy Steels P.Ltd.
Status	:	Company
PAN	:	AAECA6781D
Asst.Year	:	2003-04,2004-05,2005-06,2006-07 & 2008-09

During the course of assessment proceedings for the Asst Year 2007-08, the issue of section 145A under the Income-tax Act, 1961 was examined and certain discrepancies were found. The assessee company was asked to reconcile the above issue. After reconciling the issue, the assessee company furnished the following working:

Aruna Alloy Steels P.Ltd.					
145A Working Summary					
FY	Opening	Closing	Difference	IT Slab	IT Liability
2002-03	1471907.38	1437102.22	-34805.17	36.75%	-12790.90
2003-04	1437102.22	4089129.22	2652027.01	35.875%	951414.69
2004-05	4089129.22	2352387.16	-1736742.06	35.875%	-623056.21
2005-06	2352387.16	8105778.60	5753391.43	33.65%	1936016.22
2006-07	8105778.60	24861731.70	16755953.10	33.65%	5638378.22
2007-08	24861731.70	20468238.69	-4393493.01	33.65%	-1478410.40
2008-09	20468238.69	10587744.90	-9880493.78	33.39%	-3299096.87
Net tax payable					3112454.74

From the above working, it is clearly visible that the tax of Rs. 31,12,455/- has escaped assessment beginning from the financial year 2002-03 till 2008-09. Any adjustment u/s.145A cannot be done in isolation as it is connected with the valuation of closing stock, since the closing stock for any relevant financial year will become the opening stock of the succeeding financial year. Therefore, any adjustment u/s. 145A has to be made from the beginning of the financial year which can be reopened as on date till the last financial year for which the assessee has filed the return. Therefore, keeping the above facts and view, I have reason to believe that income chargeable to tax has escaped assessment within the meaning and scope of section 147 of the Income tax Act, 1961.

In the interest of revenue, the ACIT, Company Circle-It, Madurai is hereby directed and accorded approval on this issue. Issue notice u/s.148(2) for the A Y-2003-04, 2004-05, 2005-06,2006-07 & 2008-09. The ACIT, Company Circle-II, Madurai is also directed that the same issue has to be taken up in the AY 2009-10 under scrutiny assessment for which time for selecting will be as per Action Plan Target 2010-11.

Sd/- 04.01.2010
S.S.Hari Rao,
JCIT,Range-III,Madurai".

3. After the receipt of the above letter, the Assessing Officer recorded the reasons on 11.01.2010 as shown below :-

"During the course of assessment proceedings for the Asst. Year 2007-08, the issue of sec.145A under the IT Act,1961 was examined and certain discrepancies were found. The assessee company was asked to reconcile the above issue. After reconciling the issue, the assessee company furnished the following working:

Section 145A Working Summary					
FY	Opening	Closing	Differ	IT Slab	IT Liability
2002-03	1471907.38	1437102.22	-34805.17	36.75%	-12790.90
2003-04	1437102.22	4089129.22	2652027.01	35.875%	951414.69
2004-05	4089129.22	2352387.16	-1736742.06	35.875%	-623056.21
2005-06	2352387.16	8105778.60	5753391.43	33.65%	1936016.22
2006-07	8105778.60	24861731.70	16755953.10	33.65%	5638378.22
2007-08	24861731.70	20468238.69	-4393493.01	33.39%	-1478410.40
2008-09	20468238.69	10587744.90	-9880493.78	33.39%	-3299096.87
Net tax payable					3112454.74

From the above working, it is clearly visible that the tax of RS.31124551/- has escaped assessment beginning from Financial Year 2002-03 till 2008-09. Any adjustment u/s.145A cannot be done in isolation as it is connected with the valuation of closing stock, since the closing stock for any relevant financial year will become the opening stock of the succeeding financial year. Therefore, any adjustment u/s. 145A has to be made from the beginning of the financial year which can be reopened as on date till the last financial year for which the assessee has filed the return. Hence, I have reasons to believe that income has escaped assessment. Notice u/s. 148 is hereby issued.

Sd/-
ACIT
11.01.2010

10. From the above, it is obvious that the satisfaction was recorded by the JCIT, Range-III, Madurai. In fact, the JCIT found that he has reason to believe that income chargeable to tax escaped assessment within the meaning of Section 147 of the Act.

11. Now the question arises for consideration is for the purpose of reopening assessment under Section 147 of the Act, whether the Assessing Officer has to believe that the income chargeable to tax escaped assessment or any other authority established under the Income-tax Act. For the purpose of convenience, we are reproducing Section 147 of the Act:-

INCOME ESCAPING ASSESSMENT.

147. If the Assessing Officer, has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in

the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year):

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment for that assessment year.

Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year :

Provided further that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject-matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.

Explanation 1.— Production before the Assessing officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

Explanation 2.— For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:--

(a) where no return of income has been furnished by the assessee although his total income or the total income of

any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax;

(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

(ba) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under section 92E ;

(c) where an assessment has been made, but--

(ca) where a return of income has not been furnished by the assessee or a return of income has been furnished by him and on the basis of information or document received from the prescribed income-tax authority, under sub-section (2) of section 133C, it is noticed by the Assessing Officer that the income of the assessee exceeds the maximum amount not chargeable to tax, or as the case may be, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return ;

(i) income chargeable to tax has been under assessed; or

(ii) such income has been assessed at too low a rate; or

(iii) such income has been made the subject of excessive relief under this Act; or

(iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed.

(d) where a person is found to have any asset (including financial interest in any entity) located outside India.

Explanation 3.— For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice

subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.

Explanation 4.— For the removal of doubts, it is hereby clarified that the provisions of this section, as amended, by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012

12. Admittedly, the proceeding before the Assessing Officer or any other authority under the Income-tax Act, is a judicial proceeding as provided in Section 136 of the Act. A reading of Section 147 of the Act clearly says that if the Assessing Officer has reason to believe that income chargeable to tax has escaped assessment for any assessment year, he may subject to provisions of Section 143 to 148 of the Act, assess or re-assess such income or any other income chargeable to tax which has escaped assessment. Therefore, the belief shall be that of the Assessing Officer and not that of any other officer established under the Income-tax Act.

13. In the case before us, admittedly, the Assistant Commissioner of Income Tax is the Assessing Officer. The Joint Commissioner of Income Tax, Range-III Madurai may be an officer higher in rank than that of Assessing Officer. If the JCIT found that

the income chargeable to tax has escaped assessment, he cannot direct the Assessing Officer to reopen the assessment under Section 147 of the Act. At the best, he may put up a note to concerned Administrative Commissioner or Principal Commissioner of Income Tax as the case may be, for revising the intimation issued under Section 143(1) of the Act. This Tribunal is of the considered opinion that in the guise of exercising administrative control over the Assistant Commissioner of Income Tax, the Joint Commissioner of Income Tax cannot interfere in the judicial administration of Assessing Officer unless and otherwise provided in the Income-tax Act. This Tribunal is of the considered opinion that for the purpose of reopening the assessment, it is the belief of Assessing Officer that is relevant and not the belief of any other officer or authority established under the Income-tax Act. In the case before us, the Assessing Officer simply reproduced the reasons verbatim recorded by the JCIT, Range-III, Madurai. The direction of JCIT for reopening of assessment is beyond his jurisdiction. There is no provision in the Income-tax Act enabling the JCIT or any other authority for directing the Assessing Officer for reopening the assessment.

14. We have also carefully gone through the provisions of Section 144A of the Act, which reads as follows:-

POWER OF JOINT COMMISSIONER TO ISSUE DIRECTIONS IN CERTAIN CASES

144A. A Joint Commissioner may, on his own motion or on a reference being made to him by the Assessing Officer or on the application of an assessee, call for and examine the record of any proceeding in which an assessment is pending and, if he considers that, having regard to the nature of the case or the amount involved or for any other reason, it is necessary or expedient so to do, he may issue such directions as he thinks fit for the guidance of the Assessing Officer to enable him to complete the assessment and such directions shall be binding on the Assessing Officer:

Provided that no directions which are prejudicial to the assessee shall be issued before an opportunity is given to the assessee to be heard.

Explanation For the purposes of this section, no direction as to the lines on which an investigation connected with the assessment should be made, shall be deemed to be a direction prejudicial to the assessee.

15. This Section enables the Joint Commissioner of Income Tax either on his own motion or on a reference being made by the Assessing Officer or on an application made by the assessee, call for and examine the records of any proceeding in which an assessment is pending and if he considers that having regard to the nature of the case or the amount involved or for any other reason, he may issue such direction as he may think fit for the guidance of

the Assessing Officer to enable him to complete the assessment. This Section enables the Joint CIT to issue direction when the assessment proceeding is pending before the Assessing Officer. This Section does not enable the JCIT to direct the Assessing Officer to reopen the assessment under Section 147 of the Act. The assessment can be reopened provided the same was completed either under Section 143(3) of the Act or the proceeding coming to end on expiry of time limit for issue of notice under Section 143(2) of the Act. In this case, the time limit for issue of notice under Section 143(2) has admittedly expired. Therefore, if at all there was any escapement of income, the Assessing Officer himself satisfies and believes that income chargeable to tax has escaped assessment, Section 144A of the Act does not empower the JCIT to direct the Assessing Officer to reopen the assessment. The power of JCIT to give direction is confined only to a pending proceeding and not to completed assessment proceeding either by an order under Section 143(3) of the Act or by operation of law. In this case, the assessment proceeding has come to an end by operation of law on expiry of time limit to issue notice under Section 143(2) of the Act, therefore, the JCIT has no authority or jurisdiction to issue any direction even under Section 144A of the Act.

16. In view of the above, this Tribunal is of the considered opinion that the reopening of assessment under Section 147 of the Act is not justified. Accordingly, the order of the CIT(Appeals) is confirmed.

17. Now coming to assessment year 2007-08, the first issue arises for consideration is addition of ₹1,39,80,000/- on account of short valuation of finished goods.

18. Sh. Pathlavath Peerya, the Ld. Departmental Representative, submitted that the assessee is engaged in the business of iron and steel castings. The Assessing Officer valued the closing stock of finished goods on the basis of monthly production report at 432.80 MTs for all the three units. However, the assessee admitted the closing stock only at 372.40 MTs. Therefore, according to the Ld. D.R., the Assessing Officer worked out the difference between the monthly production report and that of admitted by the assessee at ₹1,39,80,000/-. The CIT(Appeals) found that the Assessing Officer accepted the revised calculation of the assessee after correcting certain clerical errors and admitted the quantity of finished goods at 411.784 tonnes corresponding to the valuation of ₹491.05 lakhs.

According to the Ld. D.R., the assessee admitted the difference of closing stock at ₹500.54 lakhs. Therefore, the CIT(Appeals) is not justified in saying that the Assessing Officer arrived the closing stock at ₹491.05 lakhs. Hence, according to the Ld. D.R., the CIT(Appeals) is not justified in allowing the claim of the assessee.

19. On the contrary, Shri K. Ravi, the Ld.counsel for the assessee, submitted that during the pendency of the appeal before the CIT(Appeals), the CIT(Appeals) called for remand report. In the remand report dated 1.10.2014, the Assessing Officer accepted the mistake and admitted the quantity of finished goods at 411.784 MTs corresponding value of closing stock was ₹491.05 lakhs. In response to the remand report filed by the Assessing Officer, the assessee has also filed a letter dated 24.09.2014 which was reproduced by the CIT(Appeals) at page 8 of his order. In the letter, the assessee invited the attention of the CIT(Appeals) and submitted that the closing stock of finished goods was arrived only at 411.784 MTs instead of 432.80 MTs and the difference was only 21.920 MTs. The value of closing stock of finished goods on physical verification was ₹500.69 lakhs instead of ₹491.05 lakhs as per production report. Accordingly, the assessee offered only the

excess value of ₹9.64 lakhs in the books of account and no value has been suppressed. Based on this reply of the assessee, the CIT(Appeals) rightly found that the closing stock of finished goods was only 411.78 MTs, the value of which is ₹491.05 lakhs. By taking this into consideration, the CIT(Appeals) found that the assessee has offered a higher value, therefore, according to the Ld. counsel, the CIT(Appeals) found that no addition was warranted.

20. We have considered the rival submissions on either side and perused the relevant material available on record. The CIT(Appeals) found that the Assessing Officer in the remand report dated 1.10.2014 accepted the revised calculation of the assessee after correcting the mistake and admitted the closing stock of finished goods at 411.78 MTs and valued the same at ₹491.05 lakhs. Subsequently, after reproducing the letter of the assessee dated 24.09.2014, the CIT(Appeals) found that the Assessing Officer submitted in the remand report the difference was only 21.92 tonnes. We have carefully gone through the remand report dated 01.10.2014. The Assessing Officer has not said anywhere in the remand report that the difference was reduced by 21.92 tonnes as observed by the CIT(Appeals). In fact, it was stated so in the letter

dated 24.09.2014 which was reproduced by the CIT(Appeals). Therefore, there was a confusion whether the Assessing Officer himself admitted or the CIT(Appeals) came to a conclusion that the difference was reduced by 21.92 tonnes. Further, the remand report, a copy of which is available on record, does not say anything regarding the valuation of closing stock. Therefore, it is not known from where the CIT(Appeals) found that the Assessing Officer arrived the closing stock at ₹491.05 lakhs as against the omission made by the assessee at ₹500.54 lakhs. Since there was no reference about the figures either the quantity or valuation, this Tribunal is of the considered opinion that the observation made by the CIT(Appeals) in the order is not supported by the remand report filed by the Assessing Officer. Therefore, this Tribunal is of the considered opinion that the CIT(Appeals) has not considered the report in correct perspective. This Tribunal is of the considered opinion that the matter needs to be reconsidered by the CIT(Appeals) after considering the remand report filed by the Assessing Officer. Accordingly, the order of the CIT(Appeals) is set aside and the entire issue of valuation of finished goods is remitted back to the file of the CIT(Appeals). The CIT(Appeals) shall re-examine the issue after considering the remand report filed by the

Assessing Officer and thereafter decide the issue in accordance with law, after giving a reasonable opportunity to the assessee.

21. The next issue arises for consideration is addition of ₹3,43,20,013/- on account of excess claim of consumption of raw materials.

22. Sh. Pathlavath Peerya, the Ld. Departmental Representative, submitted that the Assessing Officer found that the melting charge book in which the raw material including foundry returns taken from the stores ledger for consumption were entered. The Assessing Officer, according to the Ld. D.R., has not considered the suppression of closing stock to the extent of 158.252 MTs as accepted by the assessee itself. Therefore, at least the CIT(Appeals) has to sustain the addition to the extent of ₹1,60,25,100/-. Since the omission of the was not considered, according to the Ld. D.R., the addition to the extent of ₹1,60,25,100/- has to be sustained.

23. On the contrary, Shri K. Ravi, the Ld.counsel for the assessee, submitted that the Assessing Officer found that the material taken for consumption during the year under consideration

as per the store register did not tally with material consumption as per entries in the melting charge book. The difference of 314.013 MTs was added as excess claim of raw material on the assumption that the assessee did not actually consume the material drawn from the stores. The assessee explained before the Assessing Officer and the CIT(Appeals) that the entries relating to foundry return was not entered in the melting charge sheet book even though the same was used for production. The assessee also claimed before the Assessing Officer and the CIT(Appeals) that the melting charge sheet book was maintained by the assessee only to analyse the chemical composition of final product and not as stock register.

24. The Ld.counsel for the assessee further submitted that melting charge book shows that the consumption of material has to be entered by technical person and therefore, the maintenance of melting charge book is only to study the chemical composition of material. This claim of the assessee was accepted by the CIT(Appeals). Moreover, according to the Ld. counsel, the CIT(Appeals) also found that the assessee has demonstrated before the Assessing Officer in the course of remand proceeding that entries made in the melting charge sheet book is not correct

and complete especially in respect of foundry returns. According to the Ld. counsel, when there was less consumption in melting charge book compared to stores ledger, the Assessing Officer found that the assessee did not actually consumed the material but would have sold in the open market. According to the Ld. counsel, when the Assessing Officer found that actual consumption as per melting charge book is higher when compared to stores ledger, the Assessing Officer came to a conclusion that the assessee has suppressed the closing stock in the beginning of the year and reopened the assessment for earlier assessment year. According to the Ld. counsel, when the melting charge book is admittedly incomplete and incorrect which cannot be relied upon for the purpose of making addition. The CIT(Appeals) also found that the Assessing Officer found that the melting sheet was incomplete.

25. The Ld.counsel for the assessee further submitted that the consumption as per melting charge book is higher in respect of units 1 and 3. Therefore, there cannot be any addition towards excess consumption in respect of scrap materials in units 1 and 3. There was shortage of consumption to the extent of 86.748 MTs in respect of unit 2. The Ld.counsel submitted that there are certain instances

in which the raw materials were not entered in the books. The impounded material shows that scrap material consumed was 6900 KGs as per stores ledger, whereas the entry was made only for 6200 KGs in the melting charge book. This is only because of raw materials consumed were not entered in the melting charge book. Therefore, it cannot be said that there was any excess consumption of scrap material. Coming to the foundry return, the Ld.counsel submitted that the consumption was less by 71.984 MTs. The overall difference, including scrap material and foundry returns, have been worked out by the assessee. As per the work sheet submitted by the assessee, the shortage was 0.491% in respect of unit 1. In unit 3, the melting charge book is higher by 1.23%. Therefore, the difference is at 3.02%. This was due to omission to enter scrap material and foundry returns in unit 2. Referring to the order of the CIT(Appeals), the Ld.counsel submitted that the Assessing Officer in the remand report dated 01.10.2014 accepted the melting charge book as incomplete and the store entries regarding foundry were only on estimate basis. In view of the above, the CIT(Appeals) has rightly deleted the addition of ₹3,43,20,013/-.

26. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, the Assessing Officer made addition of ₹3,43,20,013/-. The Revenue contended before the Tribunal that the assessee itself accepted the addition to the extent of ₹1,60,25,100/-, therefore, to that extent the addition has to be sustained. From the order of the CIT(Appeals), it appears that there was no discussion about the omission made by the assessee to the extent of 158.252 MTs of consumption of raw material the value of which comes to ₹1,60,25,100/-. The CIT(Appeals) by referring to remand report dated 1.10.2004, found that the Assessing Officer has not disputed that the melting charge book was incomplete. In fact, the Assessing Officer in the remand report has observed as follows:-

“The Assessing Officer has compared the Stores Ledger and Stores Issue Slip with the Daily Material Charge Sheet and the difference both negative and positive were considered for addition to the total income of the assessee. The reason being stated as that excessive consumption reflected in the stores ledger is to disallow equivalent amount of sums from the head purchase as assessee has taken out from the stock an equivalent sums of monies. Whereas the negative stock of material is evidence by itself which speaks on its own that the corresponding material was suppressed as a closing stock in the previous stock.

As far as the stores ledger issue slip and the melting charge sheet figures are concerned, both are based on the

actual weighing and there is no calculation involved. So naturally there is no scope for the difference. The main contention of the assessee is that the melting charge sheet is a technical document to have a control over the chemical composition of the product and it is not scrupulously prepared and hence it is incomplete. Therefore, he assessee claims that the incomplete document is compared with the issue slips of the stores ledger which is a complete document.

It is pertinent to note that both these documents are devoid of any calculation figures or adoption of the established weight. The assessee claimed that there is different purpose of maintenance of both the documents. The assessee did not give adequate reason for the alleged incomplete or skipping of the entries in the melting charge sheet.”

27. From the above remand report, it appears that the Assessing Officer compared the stores ledger and stores issue slip with the Daily Material Charge Sheet and the difference both negative and positive were considered for addition to the total income of the assessee. The Assessing Officer has also observed in the remand report that the stores ledger issue slip and melting charge sheet figures are based upon the actual weighing and there is no calculation involved. Therefore, there was no scope for any difference. Referring to the claim of the assessee that melting charge book was not accurate and it was incomplete, the Assessing Officer found that the assessee could not give any adequate reason for so-called incomplete or skipping of the entries in the melting

charge sheet. Nowhere in the alleged report, the Assessing Officer admitted that the melting charge book was incomplete. The Assessing Officer simply referred the claim of the assessee that it was incomplete and observed that there was no adequate reason offered by the assessee for the alleged incomplete melting charge book. Therefore, this Tribunal is of the considered opinion that the CIT(Appeals) has not considered the remand report filed by the Assessing Officer in the correct perspective. He proceeded on the presumption that the Assessing Officer has accepted that the melting charge sheet was incomplete and many entries as skipped. Nowhere in the report, the Assessing Officer has accepted so. The Assessing Officer has simply recorded the claim of the assessee and found that the assessee could not give adequate reason for the alleged incomplete or skipping of entries in the melting charge book. This does not anyway mean that the Assessing Officer accepted that melting charge book is incomplete.

28. The very fact that the Assessing Officer observed that the assessee did not give adequate reason for incomplete or skipping of entries in melting charge book shows that the Assessing Officer has not accepted that the melting charge book was incomplete.

Therefore, this Tribunal is of the considered opinion that the remand report of the Assessing Officer needs to be appreciated in right perspective so as to come to a right conclusion. Since the CIT(Appeals) observed that the Assessing Officer accepted the melting charge book was incomplete and some of the entries skipped, this Tribunal is of the considered opinion that the matter needs to be reconsidered. Accordingly, the order of the CIT(Appeals) is set aside and the issue of melting charge book is remitted back to the file of the CIT(Appeals). The CIT(Appeals) shall re-examine the issue afresh, after considering the remand report filed by the Assessing Officer and also the admission made by the assessee and thereafter decide the same in accordance with law, after giving a reasonable opportunity to the assessee.

29. The next issue arises for consideration is addition of ₹3,89,66,308/- towards short valuation of closing stock of raw materials.

30. Sh. Pathlavath Peerya, the Ld. Departmental Representative, submitted that the Assessing Officer found that the assessee took physical inventory of raw material at the end of the year based upon the closing stock value as admitted in the Profit &

Loss account. There cannot be any variation between the stores ledger and physical stock of raw materials. The figures admitted in the stores ledger were final, therefore, according to the Ld. D.R., the Assessing Officer found that the assessee undervalued the closing stock in the name of physical verification. The closing stock of raw materials including foundry returns, as per the stores ledger, was 537.42 MTs which was valued at ₹13,11,83,521/-. However, the assessee on the basis of physical verification has admitted only 339.65 MTs which was valued at ₹9,22,17,213/-. The difference between two valuations was taken at ₹3,89,66,308/- and the Assessing Officer made addition towards under valuation of closing stock. Referring to the observation made by the CIT(Appeals) that the assessee claimed that the foundry returns were entered on estimate basis in the stores ledger, therefore, the same could not be taken as correct, the Ld. D.R. submitted that nowhere in the remand report the Assessing Officer recorded that the assessee was claiming the foundry returns were entered on estimate basis. According to the Ld. D.R., what was recorded by the Assessing Officer in the remand report is that it is not physically possible for the assessee to weigh the hot and heavy foundry returns to adopt the figures in the stock register.

31. The Assessing Officer, according to the Ld. D.R., further observed in the remand report that the foundry returns were taken into record and calculated value, therefore, it was only approximate figures. Therefore, the closing stock as per the stock ledger will be different from physical verification. The CIT(Appeals) found that the total variation was 197.767 MTs and the percentage of difference works out to 1.16%. This is within the permissible limit. According to the Ld. D.R., there was a difference of foundry returns between the stores ledger and physical verification as accepted by the assessee itself. When the assessee accepted the difference, the CIT(Appeals) ought not to have deleted the addition. According to the Ld. D.R., the CIT(Appeals) ignored the admission made by the assessee.

32. On the contrary, Shri K. Ravi, the Ld.counsel for the assessee, submitted that the difference in closing stock of raw materials as per the stores ledger and physical verification was found approximately which is admitted by the Assessing Officer in the remand report. Due to some practical difficulties, there are some variations in the closing stock figures of stores ledger and physical verification. Therefore, the Assessing Officer himself

admitted that there should be some variations. The CIT(Appeals), according to the Ld. counsel, after considering the remand report filed by the Assessing Officer, found that the Assessing Officer himself admitted that the assessee itself admitted that the foundry returns were recorded approximately due to practical difficulties and variation was adjusted at the year end by taking the physical stock. Therefore, according to the Ld. counsel, the CIT(Appeals) by taking the working made by the Assessing Officer, found that overall shortage works out to 1.16% and this is within permissible limit. Hence, the CIT(Appeals) has rightly deleted the addition.

33. We have considered the rival submissions on either side and perused the relevant material available on record. The Assessing Officer in the remand report found that foundry returns were taken in the record on an approximate figure. The Assessing Officer has also found that it is not practically possible for the assessee to weigh hot and heavy foundry returns to adopt the figure in the stock register. By taking into consideration of the practical difficulties faced by the assessee, the Assessing Officer himself found that physical verification itself involves approximation. However, the Assessing Officer found that even at this situation, there are some

inconsistencies in the policies and the practices adopted by the assessee. The Assessing Officer found that the closing balance never tallied with physical stock. The assessee has also started practice of making transfer entry on account of difference in the stock ledger and physical stock. The Assessing Officer further found that the physical verification of raw material and finished stock was not made scrupulously during the year end. The Assessing Officer has also found that the physical verification for the year 31.03.2014 was not completed and the last verification was only in the month of November, 2013. The assessee also claimed before the Assessing Officer that the foundry returns are entered in round figures for consumption without recording the actual weight. This may also be one of the factors for variation in the stock register.

34. Ultimately, the CIT(Appeals) accepted that the overall shortage is only 197.767 MTs without considering the admission made by the assessee under Section 131 of the Act during survey operation. The CIT(Appeals) has also not considered material found during the course of survey operation. When the assessee-company accepted the difference in the closing stock, this Tribunal is of the considered opinion that the CIT(Appeals) ought to have

taken into consideration the material found during the course of survey operation and the explanation / admission made by the assessee. Since the CIT(Appeals) has not considered the same, this Tribunal is of the considered opinion that the matter needs to be reconsidered. Accordingly, the order of the CIT(Appeals) is set aside and the entire issue is remitted back to the file of the CIT(Appeals). The CIT(Appeals) shall reconsider the issue afresh in the light of the material found during the course of survey operation and admission/ explanation offered by the assessee and thereafter decide the issue in accordance with law, after giving a reasonable opportunity to the assessee.

35. The next issue arises for consideration is addition of ₹56,38,378/- made on account of adjustment towards valuation of finished goods as per Section 145A of the Act.

36. We have heard both the Ld. Departmental Representative and the Ld.counsel for the assessee. Since the main issue with regard to addition on account of valuation of finished goods and raw material and excess claim of consumption of raw material, was remitted back to the file of the CIT(Appeals), this Tribunal is of the considered opinion that this issue has also to be reconsidered by

the CIT(Appeals). Accordingly, the order of the CIT(Appeals) is set aside and the issue of addition of ₹56,38,378/- is also remitted back to the file of the CIT(Appeals).

37. Now coming to assessment year 2008-09 in I.T.A. No.933/Mds/2016, the issue arises for consideration is addition of ₹60,66,929/- made on account of excess claim of consumption of raw materials.

38. This issue was discussed for the assessment year 2007-08 and the matter was remitted back to the file of the CIT(Appeals). In the light of the observation made by this Tribunal for assessment year 2007-08, this Tribunal is of the considered opinion that for the assessment year 2008-09 also the matter requires to be remitted back to the file of the CIT(Appeals) for reconsideration. Accordingly, the order of the CIT(Appeals) is set aside and the addition of ₹60,66,929/- is remitted back to the file of the CIT(Appeals). The CIT(Appeals) shall reconsider the matter afresh in accordance with law and decide the same as directed by this Tribunal for the assessment year 2007-08.

39. In the result, the Revenue's appeal for assessment year 2006-07 in I.T.A. No.3/Mds/2016 is dismissed. However, I.T.A. No.933/Mds/2016 and I.T.A. No.847/Mds/2016 are allowed for statistical purposes.

Order pronounced on 20th April, 2017 at Chennai.

sd/-

(अब्राहम पी.जॉर्ज)

(Abraham P. George)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 20th April, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-1, Madurai
4. Principal CIT-1, Madurai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.