

**IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
BEFORE: SHRI N.S.SAINI, AM & SHRI PAVAN KUMAR GADALE, JM**

ITA No.345/RPR/2014
(Assessment Year :2005-2006)

DCIT-1, Bhilai , District Durg(CG)	vs	ABS Steels Pvt. Ltd. 46, Civic Centre, Bhilai (CG)
PAN No. : AABCA 9110 F		
(Appellant)	..	Respondent

Revenue by : Shri Sanjay Kumar, DR
Assessee by : None

Date of Hearing : 15/01/2018
Date of Pronouncement 17/01/2018

आदेश / O R D E R

Per Shri N.S.Saini, AM:

This is an appeal filed by the Revenue against the order of the CIT(A), Raipur, dated 28.08.2014 for the assessment year 2005-2006.

2. The Revenue has taken the following grounds of appeal :-

a. *"Whether on the facts & circumstances of the case the learned CIT(A) has erred in admitting additional ground raised during the course of hearing before CIT(A) which was not appearing in the form No. 35 ?"*

b. *"Whether in law and on facts & circumstances of the case, the learned CIT(A) has erred in holding that the reassessment proceedings were initiated by issuing a notice U/s. 148 after the change of opinion without any change in the facts? "*

c. *"Whether on the facts and circumstances of the case the CIT(A) has erred in not deciding the appeal on merit by merely allowing the appeals on additional ground ?"*

c. *"The Order of the Ld. CIT(A) is erroneous both in law and on facts."*

d. *"Any other ground that may be adduced at the time of hearing."*

3. Brief facts of the case are that the original assessment u/s.143(3) of the Act was completed on 30.12.2007 determining the book profit at Rs.31,56,580/- under the provisions of Section 115JB of the Act. Subsequently the AO noticed that the assessee company has adopted different figures of closing balance of raw material, wire rod i.e. one figure

for income tax purposes and different figure for bank for obtaining cash credit limit, details of which are as under :-

Item	Quantity		Difference	Rate	Total under valuation
	As per books of account	As per statement			
Wire Rod	2979.640 MT	3802.530 MT	822.89 MT	Rs.25,500/-	Rs.21806585

Thus, there has been under-valuation of closing stock to the extent of Rs.2,18,06,585/-. Since the assessee company failed to disclose its facts and figures of income fully and truly, notice u/s.148 of the Act was issued to the assessee on 10.03.2011 and the assessment was made u/s.144/147 of the Act on 30.12.2011 making addition of Rs.2,18,06,585/- to the income of the assessee.

4. On appeal the CIT(A) held as under :-

“3.8 I have gone through the observations of the AO and submissions of the appellant as also the contents and Counter comments of the parties. In this case, the additional ground of appeal was raised only to elaborate the second ground of appeal, which was general in nature, for good and bonafide reasons. Hence, in view of Hon'ble Supreme Court's decision in the case of Jute Corporation of India Ltd. (supra), I am satisfied that it is admissible for adjudication, accordingly admitted. The undisputed facts in this case are that regular assessment u/s.143(3) of the Act was made on 30.12.2007. In the course of said assessment proceedings, vide query No.5 of query letter dated 08.10.2007, with reference to Secured Loan from SBI, the AO had required the appellant to provide copy of monthly statements of inventory provided to the bank. The appellant has filed the same vide reply dated 1.12.2007. The stock of wired rod as per books Of accounts was 297079.40MT and in the stock statements provided to the bank, it was shown 3802.530MT. Thus, the difference considered for initiating re-assessment proceedings was there, but the AO did not make any addition in this regard. No new material was unearthed subsequently. Hence, the correctness of initiation of re-

assessment proceedings attains great significance. In his remand report, the present AO has admitted that the AO making the original assessment had not taken cognizance of the relevant reply and enclosures and verification was not done. It was also elucidated that omissions adversely affecting the revenue need to be considered in subsequent proceedings as per provisions of the Income-tax Act. Thus, if the original assessment order was prejudicial to the interests of revenue, the remedy lies in sec. 263 and not in section 147. It is pertinent to refer to Para-13 (3) Hon'ble Delhi High Court's decision in case of Usha International Ltd. (supra) relied upon by the appellant, which reads as under:

"Reassessment proceedings will be invalid in case an issue or query is raised and answered by the assessee in original assessment proceedings but thereafter the Assessing Officer does not make any addition in the assessment order. In such situations it should be accepted that the issue was examined but the Assessing Officer did not find any ground or reason to make addition or reject the stand of the assessee. He forms an opinion. The reassessment will be invalid because the Assessing Officer had formed an opinion in the original assessment, though he had not recorded his reasons"

-Therefore, looking to the facts and circumstances of the case and the above legal position, it has to be held that the present action was based on change of opinion. The law laid down by Hon'ble Supreme Court in the case of CIT vs Kelvinator of India Ltd (supra) is clearly applicable to the appellant's case. Therefore, looking to the facts and circumstances of the case, I am of the considered opinion that reassessment proceedings were initiated after change of opinion without any change in the facts and Material hence, the same are not sustainable.

3.9 On the objection of the JCIT that CIT (Appeals) cannot adjudicate an appeal challenging the very validity of reassessment

on the ground that A.O. has obtained satisfaction of CIT u/s.151 on reasons recorded, it is held that the interpretation of the JCIT is not correct. In my considered opinion, the JCIT traveled beyond the scope of the Act and hyper-technical and the Act did not place such bar and if such proposition is considered to be correct, the aggrieved assesseees would be deprived of their right of first appeal, which cannot be correct unless the Act specifically so provides. As held by the Hon'ble Uttaranchal High Court in the case of Mcdermott's case (supra), the object of satisfaction was to safeguard assesseees from harassment and certainly not to substitute the CIT's satisfaction to that of the Assessing Officer's reason to believe that income has escaped assessment. It is trite law that the A.O. is the ultimate authority for initiating reassessment proceedings if requisite conditions are fulfilled and any such proceedings initiated at the instance of higher authorities shall make the entire exercise bad in law. Therefore, I am of the considered opinion that the JCIT's objection is not sustainable, hence rejected. This ground of appeal is accordingly, allowed.

5. The DR relied on the order of Assessing Officer.
6. We find that no specific error in the order of CIT(A) could be pointed out by the DR. Further the CIT(A) has given a finding that in an assessment u/s.143(3) of the Act on 30.12.2007 during the course of assessment proceeding vide query No.5 of query letter dated 08.10.2007 with reference to secured loan from SBI, the AO had required the assessee to provide copy of monthly statements of inventory provided to the bank. The assessee has filed the same vide reply dated 11.12.2007. The stock of wired rod as per books of accounts was 297079.40MT and in the stock statements provided to the bank, it was shown 3802.530MT. Thus, the difference considered for initiating re-assessment proceedings was there, but the AO did not make any addition in this regard. No new

material was unearthed subsequently. Hence, the correctness of initiation of re-assessment proceedings attains great significance. The CIT(A) has further observed that in the remand report, the present AO has admitted that the AO making the original assessment had not taken cognizance of the relevant reply and enclosures and verification was not done. It was also elucidated that omissions adversely affecting the revenue need to be considered in subsequent proceedings as per provisions of the Income-tax Act. Therefore, the CIT(A) observed that if the original assessment order was prejudicial to the interests of revenue, the remedy lies in sec. 263 and not in section 147 of the Act. This finding of CIT(A) has not been controverted by the DR by brining any cogent and relevant material on record.

7. Further the CIT(A) has relied on the decision Hon'ble Delhi High Court in case of Usha International Ltd. 253 CTR (Del)(FB) 113, where it was held that *"reassessment proceedings will be invalid in case an issue or query is raised and answered by the assessee in original assessment proceedings but thereafter the Assessing Officer does not make any addition in the assessment order. In such situations it should be accepted that the issue was examined but the Assessing Officer did not find any ground or reason to make addition or reject the stand of the assessee. He forms an opinion. The reassessment will be invalid because the Assessing Officer had formed an opinion in the original assessment, though he had not recorded his reasons"*. In view of the above, we find no good reason to interfere with the order of CIT(A), which is confirmed and the grounds of appeal of Revenue are dismissed.

6. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the Court on Wednesday, the 17th Day of January, 2018 at Raipur.

Sd/-

(PAVAN KUMAR GADALE)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(N. S. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

Raipur; दिनांक Dated 17/01/2018

प्र.कु.मि/PKM, Senior Private Secretary

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, Raipur / DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
Income Tax Appellate Tribunal, Raipur