

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'B' CHANDIGARH**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA Nos. 477/CHD/2017
Assessment Year 2012-13

The DCIT,
Circle, Mandi Gobindgarh,
HQ Sirhind

Vs. M/s Samana Ispat Pvt. Ltd.,
Amloh Road, Mandi Gobindgarh

PAN No. AAJCS0501J

&

ITA Nos. 478/CHD/2017
Assessment Year 2012-13

The DCIT,
Circle, Mandi Gobindgarh,
HQ Sirhind

Vs. M/s Shakti Steel Rolling Mills.,
Village Jassran Mandi Gobindgarh

PAN No. AAADF6599M

(Appellant)

(Respondent)

Appellant by : Smt. Lagan Preet Sandhu, Sr DR
Respondent by : Sh. Ashwani Kumar, CA

Date of Hearing : 10.04.2018

Date of Pronouncement : 10.04.2018

ORDER

Per Sanjay Garg, Judicial Member:

The captioned appeals have been preferred by the Revenue against the separate orders of the Commissioner of Income Tax [hereinafter referred to as CIT(A)], Patiala dated 27.01.2017 & 09.1.2017 respectively.

2. Since the identical issue is involved in both the appeals, therefore, these have been heard together and are being disposed of by this common order. The common grounds raised in both the appeals read as under:-

1. *In the facts and circumstances of the case, whether the Ld. CIT(A) is correct in deleting the addition made by the Assessing officer on account of unaccounted investment and unaccounted profit out of unaccounted production even when the variation of consumption of electricity was more than 15%.*
2. *It is prayed that the order of Ld. CIT(A) be set aside and that of Assessing officer restored.*

3. The brief facts (taken from ITA No. 477/Chd/2017) relating to the issue under consideration are that the assessee company is engaged in manufacturing of Iron & Steel products viz Flats & Bars . During the assessment proceedings, the Assessing officer asked the assessee to furnish details of daily production of finished goods as well as the details of the manufacturing process involved. The Assessing officer further observed that the amount of electricity consumed was directly related to the production of finished goods. In order to co-relate the consumption of electricity vis-à-vis production shown, the Assessing officer gathered information regarding the consumption of electricity from the Electricity Board. The Assessing officer analyzed the consumption data of electricity vis-a vis the production of finished goods and observed that there were wide variation in ratio of electricity units consumed to per metric tons of finished goods produced during the year. He further observed that on some days, electric units consumed were very low whereas finished

goods produced were very high giving a very low value of electric units consumed to per ton of finished goods, whereas on some other days, electric units consumed were very high whereas the finished goods produced were very less giving a very high value of electric units consumed per metric unit of finished goods. He further observed that even on some days though there was electricity consumption yet no production was shown. He further noted that otherwise on other days, there was also a balance and consistency in consumption of electric units vis-a-vis production of finished goods. He, therefore, observed that it indicated that the daily production recorded by the assessee of the finished goods was not correct and, hence, not reliable. He observed that the data relating to the daily production had not been maintained as per actual production. When confronted in this respect, the assessee explained that the consumption of electricity was dependent on various factors as detailed in his reply which has been reproduced by the Assessing officer in the assessment order. The Assessing officer, however, was not satisfied with the above reply of the assessee. He ultimately held that the assessee company was involved in unaccounted production of finished goods which resulted in unaccounted sales and purchases. He, therefore, held that the sale and purchase figures in the books of account of the assessee were not correct and he accordingly rejected the books of accounts of the assessee by invoking the provisions of section 145(3) of the Income-tax Act, 1961 (in short 'the Act') and proceeded to frame the assessment in the manner as provided u/s 144 of the Act. He thereafter worked out the unaccounted income of the

assessee on account of unaccounted production and added the same to the income of the assessee.

4. Being aggrieved from the above order of the Assessing officer the assessee preferred appeal before the CIT(A).

5. Before Ld. CIT(A), the assessee filed detailed submissions. It was also brought into the knowledge of the CIT(A) that subsequent to the passing of the above stated impugned assessment order, a detailed study was carried out by a Committee headed by the Additional Commissioner of Income Tax, Range, Mandi Gobindgarh having all the Assessing officers of the Range as its members. The committee was assisted by the experts from the NISST (National Institute of the Secondary Steel Technology) and also the industry representatives. On the basis of the report of the committee, it was decided that if the variation in the consumption of the electricity is within the range of 15% of the yearly average consumption of power, the book results should be accepted. Accordingly, its book results were accepted for the assessment year 2013-14. It was, therefore, pleaded that its book results for the assessment year 2012-13 should also be accepted and consequently, the addition should be deleted. The Ld. CIT(A) got verified from the Assessing officer the above contentions of the assessee which was reported to be correct by the Assessing officer. The Ld. CIT(A) thereafter held that once an issue has been decided on merits in a subsequent year, it would not be appropriate to take a different view for the year under consideration. He, therefore, relying upon the report of the Committee constituted by the Principal Commissioner of Income Tax, Patiala held that as decided by the

Committee, the assessee was entitled to benefit of 15% variation in consumption of electricity per metric ton of finished goods produced from the average worked out on yearly basis and the variation up to 15% would not warrant any adverse cognizance. He accordingly held that since pursuant to the report of the committee, the Assessing officer has already followed this norm while making the assessment in similar cases and in same set of circumstances has accepted the books results shown by the assessee which included the assessee as well, hence, he following the principle of consistency laid down by the Hon'ble Punjab & Haryana High Court in the case of CIT Vs. RIETA Biscuits Co. (P) Ltd [2009] 309 ITR 154 (P&H) held that the books results shown by the assessee company for the year under consideration need to be accepted, as well. He therefore, set aside the action of the Assessing officer in rejecting the books of account and directed the Assessing officer to accept the book results shown by the assessee and deleted the additions so made by the Assessing officer on estimation basis.

6. Being aggrieved by the above order of the CIT(A), the Revenue has come in appeal before us.

7. At the outset, the Ld. AR of the assessee has submitted that the issue is squarely covered in favour of the assessee by the various decisions of the Tribunal in this respect and has relied upon the following recent decisions:-

- i) *ITO Vs. Amar Ispat Udyog ITA No. 384/Chd/2017 order dated 26.10.2017*

ii) *ITO Vs. Prem Steel & Allied Industries ITA No. 672/Chd/2017 dated 10.11.2017*

8. We have heard the rival contentions. We find force in the contention of the Ld. AR. The issue is squarely covered by the above referred to decisions of the Tribunal wherein while dismissing the identical appeals of the Revenue, the Tribunal has observed as under:-

“7. the Ld. CIT(A) while deciding the above appeals in favour of the assessee has already followed the internal guidelines of the committee constituted by the Principal Commissioner of Income Tax, Patiala. That the Committee so constituted was a Broad based Multi Member body having Additional Commissioner of income Tax, Mandi Gobindgarh as its Head and all the Assessing officers of the Range as its Members. It was also assisted by the experts of the National Institute of the Secondary Steel Technology (NISST) and the Industry representatives. The Ld. CIT(A) has accepted the variation of 15% in consumption of electricity per metric ton of finished goods as per the report of the Committee. He has also observed that pursuant to the report of committee, the Assessing officers have also followed this norm while making assessment in similar type of cases and have accepted the book results shown by the assesses. Considering the above facts and circumstances, we do not find any infirmity in the order of the CIT(A) while directing the Assessing officer to accept the books results shown by the assessee for this year also and to delete the

additions made by the Assessing officer on account of unaccounted profits / unaccounted investment made on estimation basis as discussed above. The order of the CIT(A) is, therefore, upheld.”

9. The facts and issue involved in both the appeals are identical to that in the cases referred to above. In view of the above, we do not find any infirmity in the orders of CIT(A) and, accordingly we uphold same. The appeals of the Revenue are hereby dismissed.

Order pronounced in the Open Court.

Sd/-
(B.R.R.KUMAR)
ACCOUNTANT MEMBER

Dated : 10.04.2018

Rkk

Copy to:

- *The Appellant*
- *The Respondent*
- *The CIT*
- *The CIT(A)*
- *The DR*

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER