

**IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH “H”, MUMBAI  
BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND  
SHRI PAWAN SINGH, JUDICIAL MEMBER**

**ITA No. 6192//Mum/2016 (Assessment Year-2012-13)**

ACIT 1(1)(1), 579, Aayakar Bhavan, M.K. Road, Mumbai-20.	<b>Vs.</b>	M/s Bharat Containers (Nagpur) Pvt. Ltd. 1 <sup>st</sup> , Floor, Cecil Court, Mahakavi Bhushan Marg, Mumbai-400001. <b>PAN: AAACB0489M</b>
(Revenue /Appellant)		(Respondent/ Assessee)

Revenue by : Shri M.C. Omi Ningshen  
(DR)

Assessee by : Shri K. Gopal with Ms. Neha  
Paranjape (AR)

Date of hearing : 04.07.2018

Date of Pronouncement : 10.08.2018

**Order Under Section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by revenue under section 253 of the Income-Tax Act (“The Act”) is directed against the order ld. CIT(A)-2, Mumbai dated 01.07.2016 for Assessment Year (AY) 2012-13, The revenue has raised the following grounds of appeal:

1. “Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) is justified in deleting the amount of Rs. 97,22,875/- as unaccounted scrap sale of Aluminum, in view of the fact that, the assessee did not submit the reconciliation of the aluminum consumption by weight on monthly basis and the scrap generated even after granting sufficient number of opportunities.”

2. “Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) is justified in deleting the amount of Rs. 97,22,875/- as unaccounted scrap sale of

Aluminum, in view of the fact that, there was variation in % of scrap generated as per details filed by the assessee @ 15% and the Audit report @ 22%; which was not discussed by the Ld.CIT(A).”

2. Brief facts of the case are that the assessee-company is in the business of manufacturing of containers, collapsible tubes & bottles, filed its return of income for Assessment Year 2012-13 on 19.07.2012 declaring income at Rs. 2,95,813/-. The return of income was selected for scrutiny; accordingly, assessment order under section 143(3) dated 09.02.2015 was passed. The Assessing Officer while passing the assessment order made the addition of Rs. 97,22,875/- by treating the sale of Aluminum scrap as unaccounted sale. On appeal before the Id. CIT(A), the entire addition/disallowance was deleted. Therefore, aggrieved by the order of Id. CIT(A), the Revenue has filed the present appeal before us.
  
3. We have heard the submission of Id. Departmental Representative (DR) for the Revenue and Id. Authorized Representative (AR) of the assessee and perused the material available on record. The Id. DR for the Revenue supported the order of Assessing Officer. The Id. DR further submits that during the assessment, the assessee was asked to reconcile the Aluminum consumption month to month. The assessee failed to furnish the requisite details. The Assessing Officer on the basis of Annexure-5 of Form No. 3CD (Audit Report) noted that the total consumption of Aluminum is 1023467 Kg. and the scrap generated is 224880 Kg. which almost 22%. The assessee has shown the scrap of 239331 Kg. worth Rs. 1,66,01,335/-,

thus, there is a difference of 15% and 22%. The Assessing Officer on the basis of rate of scrap available in the market made the disallowance of difference of two figure and added Rs. 97,22,875/-. The Id. CIT(A) deleted the entire addition without any speaking order.

4. On the other hand, the AR of the assessee supported the order of Id. CIT(A). The Id. AR of the assessee submits that quantity of scrap is not disputed. The Assessing Officer made the arbitrary addition on the basis of surmise and conjectures. The Assessing Officer made the addition on the basis of rate of finished Aluminum utensils in the market. The scrap generated in the process of manufacturing product by assessee is not an item salable as such, as finished product ate sold in the market. However, the scrape can be sold only as per the demand in the market. The assessee sold Aluminum scrap of 239311 Kg. for aggregate amount of Rs. 1,66,01,335/- from time to time. However, the Assessing Officer assumed sale at Rs. 2,63,24,210/- by taking into sell in rate of 110 per Kg. The Id. AR of the assessee further submits that details of scrap sold during the year are available at page no. 43 & 44 of the Paper Book.
5. We have considered the rival submission of the parties and have gone through the orders of authorities below. We have noted that the Assessing Officer estimated the disallowance on hypothecation based as per the rate available on website (<http://scrapnews.recycleinme.com/newsdetails->

The Assessing Officer has adopted the rate of Aluminum utensils scrap and made the addition by applying rate of Rs. 110 per Kg. on total scrap of 239311 Kg. The assessee has shown the scrap of Rs. 1,66,01,335/- thereby the Assessing Officer made the addition of Rs. 97,22,875/-. The Id. CIT(A) after considering the submission of the assessee that assessee is engaged in the business of manufacturing in lighter weight colored container and the Assessing Officer have taken heavier gauge for comparing wastage while making assessment. The comparison made by Assessing Officer on the basis of details available on website is unjustified. The scrap value of collapsible tubes and bottles are a lighter metal. Therefore, the addition made by Assessing Officer is not justifiable. We have noted that the Assessing Officer has not disputed the quantity of the Aluminum scrap. The Assessing Officer applied the rate without making proper investigation or bringing comparable rate of scrap generated in the business of assessee. We have further noted that before making addition, the Assessing Officer has not given any opportunity to the assessee to rebut the valuation/rate of scrap adopted by Assessing Officer. In our view, the Id. CIT(A) has deleted the addition by appreciating the facts on record. No contrary fact or law is brought to our notice by Id. DR to take a contrary view. In the result, the ground of appeal raised by Revenue is dismissed.

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

Order pronounced in the open court on this 10<sup>th</sup> August, 2018.

Sd/-

**(G.S. PANNU)**  
**ACCOUNTANT MEMBER**

Sd/-

**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Mumbai; Dated 10/08/2018

S.K.PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

(Asstt.Registrar)  
**ITAT, Mumbai**