

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH

**Before: Shri Amarjit Singh, Accountant Member
And Ms. Madhumita Roy, Judicial Member**

**ITA No. 2312/Ahd/2013
Assessment Year 2010-11**

The DCIT(OSD), Range-1, Ahmedabad (Appellant)	Vs	Besto Tradelink Pvt. Ltd., 9 th Floor, B.D. Patel House, Naranpura Road, Ahmedabad PAN: AAACB6241P (Respondent)
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**Revenue by: Shri Mudit Nagpal, Sr. D.R.
Assessee by: Shri D.K. Parikh, A.R.**

Date of hearing : 07-02-2019
Date of pronouncement : 25-02-2019

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This revenue's appeal for A.Y. 2010-11, arises from order of the CIT(A)-6, Ahmedabad dated 24-07-2013, in proceedings under section 143(3) of the Income Tax Act, 1961; in short the Act.

2. The solitary ground of appeal of the revenue is against the decision of Rs. 63,54 lacs being unaccounted purchases of Bauxite.

3. The facts in brief are that the assessee has filed return of income on 15th October, 2010 declaring total income of Rs. 50,92,180/-. Subsequently, the case was selected under security by issuing of notice u/s. 143(2) of the act on 24th August, 2011. During the course of assessment, the assessing officer has noticed excess sale of 63,54.69 tons of bauxite minerals from the stock summary furnished by the assessee. The assessee explained that purchase of 34,548.053 MT of bauxite purchased in the month of October, 2009 was recorded in the books of account in the month of Nov, 2009 due to which there was short of stock in the month of October, 2009. However, the same squared up in the month of Nov, 2009 and ultimately stock of 703 ton was remained at the end of the year. The assessee has also explained that there was excess weight of Bauxite due to moisture and water contents. The assessing officer has not accepted the explanation of the assessee and made addition of Rs. 63,54,690/- by treating the aforesaid discrepancy as unaccounted purchases made by the assessee.

4. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has allowed the appeal of the assessee. The relevant part of the decision of the Id. CIT(A) is reproduced as under:-

“3.3 I have considered the observations of the A.O and the contentions of the appellant. The explanation offered by the appellant is two fold. First one was that the bauxite kept in the open plot absorbed moisture from the atmosphere, thereby increasing its weight by 941 MT. A.O at para-5.4 of the assessment order observed that similar explanation was not accepted in the preceding assessment year 2009-10. Relying on the assessment order for that year, A.O did not accept the explanation in the year under consideration also. This issue was adjudicated in my order No.CIT(A)- VI/ ITO.Wd.l (2)208/11-12 dtd. 24/07/2013 for A.Y. 2009-10 wherein it was held as follows:

"3.4 Having considered the facts of the matter I am inclined to accept the contentions of the Ld. A.R. Appellant is trading in Bauxite. Bauxite cannot be purchased like any other commodity in the open market. The contention that Bauxite gains weight when kept in the open plot is tenable. As seen from the appellant's invoice to foreign buyer namely Ta Yi International Ltd [Samoa], Taiwan dtd. 08/02/2008, Free Moisture during non-monsoon period was mentioned at 6% and Free Moisture during monsoon period was mentioned at 10%. It is seen further that penalty would be deductible from the sale-price, if the moisture content in the Bauxite being exported exceeded allowable 5%. Thus Bauxite containing moisture is a natural and commercially accepted phenomenon. In the assessment order A.O did not offer any adverse comments on the said invoice furnished to him. Therefore I am of the view that A.O's inference that appellant had made unaccounted purchase of Bauxite does not stand to reason, impugned addition is deleted. This ground of appeal is allowed. "
Facts remaining the same in the year under consideration, the addition made on this issue is deleted."

5. We have heard the rival contentions and perused the material on record carefully. During the course of assessment, the assessing officer noticed that the assessee had shown sales of Rs. 43169.883 MT of Bauxite till the month of October, 2009 as against the stock of 3618.193 MT. With the assistance of the Id. counsel, we have gone through the material on record and it is noticed that 5413.450 MT of Bauxite was received by the assessee on various dates in the month of October and same was available in actual stock for sale, however, the invoice for 5413.450 was received and accounted for in the month of Nov, 2009. We have also noticed that above position of stock has been also demonstrated in the Ann. 1 for detail of monthly opening stock, purchase, sale and closing stock wherein in the month of Nov, 2009 quantity of purchase of Bauxite of 5413.450 was reflected. The purchase of above Bauxite was also shown in the ledger account of the supplier M/s. Manaksia Ltd. on 11/11/2009. The Id. CIT(A) has considered the aforesaid material fact along with supporting evidences i.e. Bill dated 11-11-2009 Gate Pass No. Truck No. Gross and Net Weight before adjudicating the issue. Regarding negative stock at the end of the November at 941.240 and finally of 703.153 at the end of the year the

assessee has demonstrated the stock position in the month-wise stock statement. The Id. CIT(A) CIT(A) has adjudicated the similar issue in the case of the assessee for assessment year 2009-10 that there was use to increase in the weight of Bauxite due to moisture. It was explained that Bauxite are stored in open and because of its nature it absorbs moisture and water which results in increase in the weight of stock of Bauxite. The Id. CIT(A) has verified this issue in depth and stated that free mixture during non-monsoon period was mentioned at 6% and free moisture during monsoon period was mentioned at 10%. In the light of the above fact, we find force in the findings of the Id. CIT(A) that Bauxite gains weight when kept in the open plot and the mere reason for the increase in the weight was the amount of moisture it had observed. Considering the aforesaid material fact, we do not find any infirmity in the decision of the Id. CIT(A), therefore, the appeal of the revenue is dismissed.

6. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 25-02-2019

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER
Ahmedabad : Dated 25/02/2019

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश क० त० प्र० अ० प्र० / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)

5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलालय आधिकरण,
अहमदाबाद