

**IN THE INCOME TAX APPELLATE TRIBUNAL
RANCHI BENCH, RANCHI**

Before **Shri S.S.Godara, Judicial Member** and
Dr. A.L. Saini, Accountant Member

ITA No.174/Ran/2016 Assessment Year :2010-11
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Assistant CIT, Circle-1 47, C.H. Area, Jamshedpur	V/s.	M/s Auto Profile Ltd., C-33, 34 & 35, Phase IV, Adityapur Industrial Area, Gamharia, Jamshedpur-832108 [PAN No.AABCA 3931 A]
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri P.K. Mondal, JCIT-DR
प्रत्यर्थी की ओर से/By Respondent	Shri Devesh Poddar, Advocate
सुनवाई की तारीख/Date of Hearing	09-01-2019
घोषणा की तारीख/Date of Pronouncement	15-02-2019

आदेश /ORDER

PER BENCH:-

This Revenue's appeal for assessment year 2010-11 arises against the Commissioner of Income Tax (Appeals)-Jamshedpur's order dated 28.03.2016 passed in case No.516/JSR/2012-13 involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused

2. The Revenue's sole substantive grievance canvass in the instant appeal challenges correctness of CIT(A)'s action reversing Assessing

Officer's deleting the addition amount of Rs.2,5,86,538/- as estimated income on scrap. The lower appellate discussion to this effect reads as follows:-

"3. I have examined submissions made by the assessee to the effect mentioned as above vis-à-vis facts of this case discussed hereinabove. On examination of materials available on record, gathered from third parties u/s. 133(6) of the I.T Act, 1961 vis-à-vis submissions made by the assessee, the following positions emerge.

3.1 That the assessee has failed to maintain day to day stock of scraps, although the assessee has shown gross receipt from sale of scraps at Rs.8,82,27,394/-- against total turnover disclosed at Rs.111.58 crore under such the realization from sale of scraps constitutes a substantial portion of the turnover of the assessee. As such, the assessee is mandated to maintain quantitative details of scraps pursuant to provisions of para-3 and 4 of part-II of schedule-6 of the Companies Act and hence, the book result of the assessee shown as per audited account is not a reflections of complete business affairs to be disclosed by the assessee.

3.2 The assessee has not disclosed any opening or closing stock of scraps deeming thereof clearly that all generate scraps have claimed to be sold by the assessee.

3.3 It has already been clarified in para 2 as above, that the assessee has only been engaged in manufacturing of specified auto components of M/s Tata Motors resulting in generation of fixed quantity of scraps. However, during the course of examination of this case, the following facts have been transpired.

v) The main raw material in the case of the assessee is CR sheets & plates and HR sheets & plates;

vi) The consumption of such consumables are a continuous process in the case of the assessee resulting in generation of fixed percentages of scraps.

vii) The resultant scraps is a fast selling item due to availability of several consuming manufacturing units in the district of Jamshedpur itself.

3.4 In view of facts emerge in para 3.3 as above, the assessee was asked to furnish unit-wise details of generation of scraps vide this office show cause letter dated 30th January, 2013 seeking compliance on 4th February, 2013 in the following format:-

Sl.No.	Date	Opening balance of scrap	Consumption of raw materials i.e. the sheet metal	Scrap obtained	Value of scrap sold	Value of scrap sold	Balance scrap in hand
1	2	3	4	5	6	7	8

However, the assessee has not submitted any details as above, although, provided sufficient opportunities. In fact, the assessee has admitted vide para 1 of its reply dated 13/02/2013 reproduced in para 2.5 as above; that he has not maintained any such details and hence, the book result shown by the assessee to the effect of generation of scraps and its sale cannot be accepted.

3.5 In fact, the assessee has not disclosed generation of any scraps in Unit – II of its concern for the month of February and March 2010. However, on perusal of monthly ER-1 return submitted to the Superintendent Central Excise, Adityapur, Range-3; it has been found that the assessee has disclosed manufacturing and sale of auto components at 3581 kg. and 677kg. for manufacturing value at Rs.3,23,144.15 and Rs.3,72,189.91 respectively. The production of such auto components would have certainly entail generation of scraps as discussed in preceding paras; which has not been disclosed by the assessee and hence, it is evident that the assessee has been engaged in concealed transaction of scraps.

3.6 Further, on the basis of informations furnished by the assessee w.r.t monthly consumption of raw material vis-a-vis generation of scraps; the following positions emerge:-

Sl.No.	Name of the month	CR sheets and plates	HR sheets and plates	Total	Weight of the scrap	% of col. No. 7 w.r.t. col. No.5
1	2	3	4	5	6	7
	April 09	456.444	1054.818	1511.262	305	20.18%
	May 09	481.465	984.078	1465.544	348.988	23.81%
	June 09	398.102	1436.892	1834.994	494.209	26.93%
	July 09	493.447	1621.855	2115.298	580.517	27.44%
	Aug 09	673.305	1195.069	1868.374	438.540	223.47%
	Sep. 09	520.492	1075.932	1566.424	437.610	27.93%
	Oct. 09	576.060	1868.250	2384.31	607.400	25.47%
	Nov. 09	714.344	2136.034	2850.378	908.170	31.65%
	Dec. 09	574.996	1857.17	2432.160	792.635	32.59%
	Jan. 10	547.053	2420.2011	2967.254	644.638	21.72%
	Feb 10	707.996	2648.896	3356.892	744.630	22.18%
	Mar 10	639.509	3751.726	4391.235	971.945	22.13%

3.7. **On perusal of the aforesaid analysis, it is evident that the percentage of yield of scraps as disclosed; are not uniform whereas, the same should be uniform in view of discussions held in preceding paras. It ranges from 20.18% to 32.59% i.e. for the month of April 2009 and December 2009 respectively. Since, the assessee has never disclosed any opening or closing monthly balance of scraps (as is evident from the chart furnished by the assessee during the course of assessment year proceedings annexed herewith vide annexure- 'A'); it becomes evident that scraps are a fast selling item resulting in day to day disposal. This fact also finds support from discussion held in para 3.3 and 3.4 as above. As such, it is inferred that the percentage of generation vis-a-vis sale of scraps should be uniform in percentage term.**

3.8 Further on perusal of sale invoices of scraps, it has been found that it has been billed around Rs.10/- per kg. only. However, from local enquiries, it has been gathered that the rate of scraps for the relevant period ranges from rs.20/- to Rs.25/- per kg., in the grey market. As such, the rate of sale disclosed by the assessee around Rs.10/- w.e.f. 01/04/2009 to 31/03/2010 is not reliable and hence, it appears that the assessee has also been engaged in **under-billing of sale of scraps.**

3.9 In view of facts discussed elaborately as above, I hereby reject book result of the assessee w.r.t. generation cum trading of scraps by invoking the proviso to section 145 of the I. T Act, 1961 by placing reliance on following decisions:-

- i) S.N. Namasivayam Chettiar vs. CIT (SDC) 38 ITR 579
- ii) Awadhesh Pratap Singh Abdul Rahman & Bros vs. CIT (All) 210 ITR 406
- iii) Punjab Trading Co. Lt. vs. CIT (Punj) 53 ITR 335
- iv) Ram Chandra Singh Ramnik Lal vs. CIT (Pat) 42 ITR 780
- v) Bhai Sunder Das Sarkar Singh (P) Ltd vs. CIT (Del) 42 ITR 780
- vi) Royal Medical Hall vs. CIT (AP) 46 ITR 748

3.10 It has been held by the Apex Court in the case of CIT vs. British Paints Limited (SC) 188 ITR 44 that "if method of accounting, even though consistently followed, does not disclose true and proper income, is entitled to adopt appropriate computation to determine true income". Since, the assessee has not only been engaged in concealing generation of scraps as established in para 3.5 supra but is also engaged in under billing w.r.t. sale of scraps as discussed in para 3.8 as above, I hereby estimate generation of scraps at 32.59% i.e. the peak percentage of generation of scraps disclosed by the assessee for the month of December, 2009.

The concealed income of the assessee is being estimated accordingly as here below:-

i) Total sale of scraps disclosed	-	7268323 kg
ii) Value of sale disclosed	-	8,82,27,394.50
iii) Average rate of sale per kg.	-	Rs.12.14
iv) Total consumption of CR sheets & plate and HR sheets & plates	-	2,87,44,125 kg
v) 32.59% of col. iv as above	-	93,67,710 kg.
vi) Difference of col. (v) to col. (i)	-	20,99,387 kg.
vii) Value of concealed realization from sale of scraps i.e. (vi) x (ii)	-	Rs.2,54,86,558/-

The said sum of Rs.2,54,86,558/- is accordingly added back in the total income of the assessee being treated as concealed income of the assessee.

4.2 During the course of appellate proceedings, the appellant contention is reproduced as under:-

Ref: Appeal No. 516/JSR/2013-14 A/Y 2010-11 in the matter of M/s Auto Profiles Ltd
Facts of case

1. Return of income for the above assessment year filed on 23.09.2010 showing total income of Rs.11,53,10,890/-
2. Applicant Company is engage in the business of Manufacturing and Sale of Auto Components.
3. The Ld. Assessing Officer has completed assessment u./s 143(3) on 15.03.2013 determining total income at Rs.4,07,97,450/- by adding a sum of Rs.2,54,86,558/- as concealment income derived from unaccounted sale of scrap.
4. The Ld. Assessing Officer rejected book result of the assessee w.r.t generation cum trading of scrap by invoking the proviso to section 145 of the I. Tax Act, on relying the following decisions
S.N. Namasivayaam Chettiar vs CIT (SC) 38 ITR 579
Awadhesh Pratap Singh Abdul Rahman & Bros vs. CIT (All) 210 ITR 406 And Many others.
5. For estimating the generation of scrap at 32.59% i.e. peak percentage of generation of scrap, the Ld. Assessing Officer has relied on the judgement of apex court in the case of CIT vs. British Paints limited (SSC) 188 ITR 44.

Addition was made on the under mentioned findings

1. The assessee company is engaged in the manufacturing of certain auto components as per specification given by M/s Tata Motors and also supplying the same in totality to M/s Tata Motors at Jamshedpur.
2. One of the main raw materials of the assessee is steel sheet, which are purchased from M/s TSPDL, a Tata Group of company.
3. As per para No. 3.7 of the assessment year, manufacturing of standardized auto components generates fixed percentage of scrap having substantial value in the market.
4. Non maintenance of Day to day stock register, as mandate by the Companies Act in pursuant to the provisions of Para 3 & 4 of Part II of Schedule VI.

Submissions:

1. The assessee-company is not engaged in manufacturing of auto components for M/s Tata Motors alone. The assessee company is also manufacturing various auto components of different specification for several other customers. Customer wise details of sales, out of the total sales of rs.111.57 crores, Rs.83.06 crores i.e 74.44% of the total sales was made to M/s Tata Motors, Jamshedpur and remaining sales, more than 25% are made to other parties as per there specification.
2. The Ld. Assessing Officer's observation that raw materials are purchased only from a fixed and single source is factually incorrect. In fact, the raw materials have being purchased from different sources, depending on its availability at that

point of time. Primary raw materials of the assessee is steel sheet and this material is purchased from M/s Tata Iron & Steel Co Ltd., M/s Steel Authority of India, M/s TSPDL & Others. On perusal of enclosed purchase details, it will be evident that the purchase of steel sheet from M/s Tata Ryerson Pvt. Ltd. As alleged by the Ld. AO is only to the extent of Rs.4.77 crores against the total purchases of Rs.88.65 crores for all of its units.

3. Similarly the observation of the Ld. AO that the monthly generation of scrap shall be of fixed percentage to consumption of raw material is in totality erroneous and incorrect, since the parts manufactured though, are based on specifications as provided by the buyer are of different sizes and quantity and at no sight of imagination shall generate a fixed percentage of scrap. The product mix for the month depends on the supply schedule as provided by the customers which varies in quantity and quality on month to month basis. In this regard assessee's submission (As per Annexure 2 page 9 to 35) dated 10.12.2013, that various items as manufactured by assessee shall effect the generation of scrap which was also not negated by the Ld AO in his remand report AO. There are parts, where the yield from a plate/sheet can be as high as 90% at the same time there would be parts where the yield from same raw material could be just 80%. Hence the overall generation of scrap would vary depending on the quantum, of parts manufactured, as well as the product mix, required by our customers which varies time to time as per there requirements.
 - 3.1 with regard to above, we would also like submit that the generation of scrap for a product, also depends on the sizes of available raw material i.e. steel sheets and plates, at the point of time when such products are to be manufactured. For instance, when we procure a steel plate of 1350 m width from M/s TATA STEEL, the actual rolling width can go upto 1360 to 1365 mm whereas if the same plates are purchased from M/s SAIL, the width can go upto 1380 mm such variations are considered within the rolling tolerances. This variation leads to difference in generation of scrap despite it is used for manufacturing of same parts. Many times, its happen that the specified size fo the plate as required for manufacturing a part is 1350 mm width, and if this size is not available in the market, instead, plate of width 1410 mm is available, in this case the assessee has no alternative but to comply its schedule delivery and has to procure and use the higher width material for manufacturing the same parts, this type of instances also leads to increase the quantum of scrap generation. In addition to above, the scrap is also generated from rejections, while manufacturing process arid also material returned from customers on rejection. The rejections both within factory premises and also by customers play a significant role in generation of scrap and it is known fact that rejection cannot be at all at a fixed percentage. It is therefore reiterated that at no sight of imagination the generation of scrap shall be at fixed percentage as alleged by the Ld. AO.
 - 3.2 Further, in a going concern, scrap is also generated on any fabrication and erection of plant, equipments, bins, pallets & sheds, as well as disposal of any existing shed structure on being replaced by the new shed, etc. Increased sale of scrap in any month is inevitable when such activities took place. During the year under consideration some units of the assessee's company are being in mode of expansion, the old shed & structures standing therein are also sold as scrap on its replacements and the same plays a vital role in increase in sale figures in the respective month in compare to other months.
 - 3.3 Therefore the Ld. AO contention that a fixed percentage of scrap is generated in the manufacturing process is totally erroneous and baseless,

whereas, as per company policy, the material recognized as scrap are sold and same is disclosed in Excise Returns filed by the company.

4. The assessee was not maintaining any stock register for scrap and the reasons for same were duly explained during the course of hearing and also in our earlier submissions made before your goodself. It is reiterate that since the assessee does not possess any stock as scrap therefore computation for maintenance of stock register is not at all applicable. The observation of the Learned .in various para in its assessment y order is factually incorrect on the basis of wrong interpretation of various facts and laws. So far maintenance of Scrap Stock Register, Opening Stock and Closing Stock of scrap is concerned, the assessee accounts for scrap in the books of account only at the time of sale thereof and prior to this the same is accounted for as raw material. This is so because the prime sheets and plates used for manu9facturing of a particular type of component could lead to certain off cuts which can be used for manufacturing certain other components of different specifications and also for different buyers. This is the reason that the scrap is accounted for in the books of account only at the time of sale thereof and prior to this the same is continuously treated as raw material.
- 4.1 The allegation of the Ld. AO in para 2.2 & 2.3 that the assessee had first time disclosed the value of scrap is factually incorrect, in fact, the figures, as appearing in Schedule – 19 forming part of Audited Financial Statement, and also noted by the Ld. In its assessment order, of Rs.12,9553 crores and Rs.3,7375 crores for the Financial Year 2008-2009 & 2009-2010 respectively, represents 179470 Nos. of “**Others**” items sold during the year and not the sale of scrap as considered by the Ld AO. The interpretation, by the Ld. AO that the figure of 179470 under the head “**Others**” as quantity for scrap sold and that to also in Kgs. In fact the same represents number of other parts manufactured by the assessee company which runs over 400 to 500 types in variety and hence cannot be listed in totality in the balance sheet.
- 4.2 AO observation for mandate to maintain the quantity details of scrap pursuant to provisions of Para 3 & 4 of Part II of Schedule VI of the Companies Act is in totality erroneous and bad in law. The relevant extract of statute, as applicable to the assessee company being engaged in manufacturing activities, as per Para 3 & 4 of Part II of Schedule VI is reproduced as under
- Para-3 The profit & loss account shall set out the various items relating to the income and expenditure of the company arranged under the most convenient heads and in particular, shall disclosed the following information in respect of the period covered by the accounts.
- (i)(a) The Turnover, that is the aggregate amount for which sales are effected by the company giving the amount of sale in respect of each class of goods dealt with by the company and indicating the quantities of such sale for each class separately.
- (ii)(a) In the case of manufacturing companies-
- (1) The value of the raw materials consumed, giving item-wise break-up and indicating the quantities thereof,. In this break-up, as far as possible, all important basic raw materials Shalala be shown as separate items. The intermediates or components procured from the other manufactures may, if their list is too large to be included in the break-up, be grouped under suitable headings without mentioning the quantities, provided all those items which in value individually account for 10% or more of the total value of the raw material consumed shall

be shown as separate distinct items with quantities thereof in the break-up.

- (2) The opening and closing stocks of the goods produced, giving break-up in respect of each class of goods and indicating the quantities thereof.

Para-4 The Profit and loss account shall also contain or give by way of a note detailed information showing separately the payments provided to made during the financial year to the directors (including managing directors, the managing agent, secretaries and treasurers) or manager, if any, by the company, the subsidiaries of the company and any other person:-

Schedule VI to the Companies Act, prescribes format as well as Disclosure Requirements in the Financial Statements prepared by the Companies for submission before various authorities including its Share Holders. From the relevant extract of Para 3 & 4 of Part II of Schedule VI of the Companies Act, as reproduced able it will be clearly envisaged that none of the quoted Para, on which the Learned . AO had relied upon while rejecting the books of account, mandates assessee to maintain day to day stock register for scrap.

- 4.3 The Ld. AO has mistakenly pointed out in para 3.5 of its Assessment Order that the assessee company had not shown sale of scrap in the month of February 2010 and March 2010 in case of Unit II, when 3581 kgs and 677 Kgs of manufacturing of MV parts has been shown in Excise Returns. While working out the figure of 3581 Kgs the Ld AO .added Sale of MS Scrap of 3060 Kgs & MV parts manufactured 521 Kgs. In fact, the assessee had shown 521 Nos. of MV parts manufactured and dispatched during the month and shown 3060 kgs of sale of scrap in the month under consideration. We are enclosing the corresponding excise document for the month of February 2010 to substantiate assessee's claim, Regarding not showing the sale of scrap in the month of March, in the excise document, the assessee would like to submit that the scrap is accounted for in the books of account only at the time of sale thereof and prior to this the same is booked as raw material.
- 4.4 On the basis of regarding "Under-billing of sale of scrap" as alleged by the Ld AO at para 3.8 on basis of local enquiries without any substantial evidence. In the case of assessee there is always difference between scrap realization price & market price. The market price is determined by adding various other costs like E.E. AT/CST, handling and transportation cost, profit margin of the scrap dealer, etc. Moreover, scrap fall under various categories like light melting, heavy melting, etc. whose prices are different in the market. The category of scrap as generated in the manufacturing process of the as falls in the "light" category where the price is much lower as compared to heavy melting. Further, the scrap generated from the assessee's manufacturing units, besides being light, is "voluminous" in nature, occupying more space in the transportation vehicles; the transportation cost for this scrap is much higher leading to a lower ex-works realizable price. As such the observation of the Ld. AO is only a presumption without any substantiating materials or evidences.
- 4.5 Regarding invoking of section 145 of the income tax act 1961 at para no 3.9 by placing reliance on the various decisions, we would like to submit that all the citation referred by the Ld. Assessing Officer are for rejection of books of account for none maintenance of the stock register and other relevant documents for genuineness of stock. In the present case assessee has maintained and also adduced the Books of account and

other relevant documents including quantitative details of stock before the Ld.ao during the course of scrutiny, however for the reason as explained earlier the stock register for the scrap not maintained and not produced as there is no such requirement. These are thoroughly examined and verified, however the same was reject on a flimsy ground of non maintenance of day to day stock register of scrap which is not required in our case.

Further as per para 3.10 of the assessment orders, wherein the Ld. AO on relying the decision of Hon'ble Supreme Court in the case of CIT vs. British Paints Limited (SC) 188 ITR 44 and also on the basis of various presumptions, estimated the scrap generation by taking peak percentage of 32.59% as disclosed by the assessee in the month of December, 2009 and added Rs.2.55 crores as Concealed Income realized from sale of scraps. The case law as cited as well as relied on by Ld. AO is that "if method of accounting, even though consistently followed, does not disclosed true and proper income, is entitled to adopt appropriate computation to determine true income." Whereas in the assessee's case all the relevant details and documents along with books of account, which were necessary to compute true and fair income of the assessee, were adduced before the Ld. AO and the same was duly verified. Further the various principals as laid down in the cited case law are distinguishable. The assessee company is maintaining all the requisite details and documents and also filing all its statutory returns with the appropriate authorities as prescribed under various statutes. The various allegations as noted in various paragraphs of the assessment order are mostly based on certain presumptions and estimations, without any corroborative evidences. Without prejudice to the factual matrix of the case as stated above and also in our earlier submissions, duly forwarded to the Ld AO for its comments, which was also summarily replied without taking much pain to negate the various submission/details furnished by the assessee before your goodself also demonstrate that the Ld. AO has nothing to counter assessee's submissions. Any estimated addition of a specific item by invoking provisions of Section 145 of the Income Tax Act is also bad in law and it is not at all in the true essence of the intention of law makers. Section 145(3) empowers Assessing Officer to make an assessment in the manner provided in section 144 if he is not satisfied about the correctness or completeness of the accounts of the assessee and therefore once the section 145 comes into picture the book result of the assessee should be rejected and the Profit from business or profession may be estimated in totality and not on the basis of certain specific item as done by the Ld. AO.

It is therefore, requested that the addition of Rs.2,58,86,558/- on account of concealed income from sale of scrap by invoking provisions of section 145 of the Income Tax Act, 1961 deserved to be deleted.

During the course of appellate proceeding **remand report** were also called for, the details are being reproduced below:

2. Pursuant to asking for remand report u/s.250(4) of the IT Act, 1961, the case has been fixed for hearing on 04.02.2014. However, there has been no compliance. The Ld. AR of the assessee has also been contacted on cell phone and in reply, it has been stated by the AR of the assessee that he has nothing to say fresh otherwise than whatever they have submitted under grounds of appeal before the Ld. CIT(A).

2.1 In view of assertion made by the AR of the assessee, I have gone through minutely the written grounds of appeal taken before you along with fresh evidences. In the basis of such evidences, written submissions

made by the assessee before your goodself and other relevant materials available on the record, my findings find place in subsequent paras.

3.1 The main grounds involved under the assessment order u/s. 143(3) of the IT Act, 1961, dated 15.03.2013 is as below:

- i) Invocation of proviso to section 145 of the IT Act, 1961 w.r.t. the trading result shown under the item scraps;
- ii) Estimation of sale proceed of scraps and
- iii) The basis of estimation for concealed profit out of concealed sales of scraps

3.2 Invocation of proviso to section 145 of the IT Act, 1961 w.r.t the trading result shown under the item scraps:- It has already been mentioned under the assessment order that the assessee has never shown any opening or closing balance of stock of scraps in its trading account although, the assessee has been receiving substantial amount from sale of scraps. Under sub-para 3.1 of the assessment order, it has already been mentioned that the assessee has shown gross receipt from sale of scraps at Rs.8,82,27,394/- as against total turnover disclosed at Rs.1211.58 crores i.e. 7.9% of gross turnover. Since, the manufacturing process of the assessee results in specified auto parts along with scraps, the assessee is mandated to maintain quantitative details of scraps pursuant to provisions of para-3 and 4 of Part-II of schedule 6 of the Companies Act and hence, the book result of the assessee shown as per audited account is not a reflection of complete business affairs to be disclosed by the assessee.

3.3 During the course of assessment proceedings in this case, the AR of the assessee vide written submission dated 13.02.2013 has categorically admitted that they have not maintained any day-to-day stock register. This fact has also been mentioned in the assessment order vide para 2.5

3.4 However, in the written grounds of appeal, it has been claimed by the AR of the assessee that ht scrap is being deemed as raw material and t hey account for the same at the time of sale only. This argument of the assessee cannot be relied upon, since, the realization from sale of scraps are a continuous process as is evident from monthly chart of sale of scrap as disclosed by the assessee and reproduced under para 3.6 of the assessment order Since, the generation of scrap is a by-product of manufacturing process, sit can never be deemed to be the raw material of the assessee. Even if, it is being deemed as raw material, the assessee is mandatorily required to maintain the day-to-day stock register; which the assessee has failed to do.

3.5 In view of facts discussed from sub-para 3.1 to 3.4 as above, proviso to section 145 of the IT Act, 1961, has been invoked keeping in reliance (refer to para 3.9 of the assessment order) of following decisions:-

- i) S.N.Namasivauam Chetiar vs. CIT (SC) 38 ITR 579
- ii) Awadhesh Pratap Singh Abdul Rahman & Bros vs. CIT (All) 210 ITR 406

however, the assessee has failed in appellate grounds to distinguish his case from facts and circumstances of the case cited under the assessment order.

3.6 Further, the apex court in the case of Chhabildas Tribhubandas Shaha & Others vs. CIT (SO 59 ITR 733) has also held that where there is no day-to-day stock account or day-to-day purchase (the production of scrap in this case) or sales – rejection of accounts are justified.

3.7 In view of facts as above, the invocation of proviso to section 145 of the IT Act, 1961 shall be **sustained**.

4.1 Estimation of sale proceed of scraps:- Under circumstances discussed elaborately in the preceding sub-paras and the assessment orders; the estimation of the sale proceed is also justified in view of the decision of the apex court in the case of S.N. Namasivayam Chetiar vs. CIT (SC) 38 ITR 579. Under this decision, the apex court has held as under:

Rejection of Books – Absence of vouchers / quantitative tally of stock considered with other circumstances – profit can be estimated by ITO – Keeping of stock register is of great importance because that is a means of verifying the assessee’s accounts by having a ‘quantitative tally’.

The aforesaid decision has also been relied upon in the assessment order vide sub-para 3.9.

4.2 The assessee has failed to produce any fresh material under the grounds of appeal, which may justify that the estimation of sale proceed of scrap is wrong.

4.3 Further, the claim of the assessee that the Assessing Officer does not possess any material evidence that there has been sale of scrap which is not disclosed in the books of account, is totally baseless. In fact, the issue of concealed sale of scraps have been elaborately dealt under para 3 and its sub-paras of the assessment order.

4.4 Moreover, the assessee has also failed to distinguish his case from facts and circumstances of the case adjudicated by different courts as mentioned above and the assessment year order.

4.5 In view of facts discussed elaborately under sub para 4.1 to 4.4 as above, the estimation of profit from scrap sales should be upheld.

5.1 The basis of estimation for concealed profit out of concealed sales of scraps: The basis for estimation of profit for scrap sales has been elaborately discussed from para 3.6 to 3.10 of the assessment order. Under grounds of appeal, the assessee has taken only narrative arguments without any corroborative evidence. In fact, the narrative arguments required to be corroborated by following evidences.:-

i) Quantification of scrap generated due to manufacturing of auto components of different customers;

ii) The evidence regarding the argument that the generation of scrap due to separate product is different from one another;

iii) The evidence to deny the facts mentioned under sub-para 3.5 of the assessment order, under which, concealed sales of scraps has been established

iv) Since, the assessee has not disclosed even monthly opening or closing stock of scraps as mentioned under para 3.6 of the assessment order, the assessee cannot deny that scraps are fast selling items and fetches substantial premium in the grey market and as such, the grounds of appeal taken on this account is also not reliable.

5.2 Further, the assessee has also failed to adduce any evidence alongwith its written grounds of appeal to contradict the basis of estimation of profit by taking into account of its “**peak percentage**” of monthly sale disclosed by them as worked out under para 3.6 of the assessment order.

5.3 In view of facts mentioned under para 5.1 to 5.2 as above, the basis of estimation of scrap sales i.e. the “**peak percentage**” disclosed by the assessee shall also be upheld. The Ld. Commissioner of Income Tax(Appeals) has forwarded a copy of the remand report of the Ld. Assessing Officer along with his letter F. No. CIT(A)/JSR/2014-15/257 DATED 08-05-2014 asking the assessee give the counter comments.

Perusal of the remand report shows that the Ld. AO was swayed with the observation in the assessment order and the written submission of the

assessee before the Ld. CIT(A) was not considered in right perspective. The entire estimated addition on account of sale of scrap amounting to Rs.2,58,86,558/- is made by applying proviso to section 145 holding that the assessee does not maintain day-to-day stock register for generation of scrap and no opening or closing stock of scrap is shown in the books of accounts.

The assessee during the course of assessment proceedings as also in the written submission clearly explained that the scrap generated from production of one type of component usually remains raw material for production of another type of component. The scrap generated from production of a particular item remains as raw materials, to be used for different components till the scrap is sold. Articles produced by the assessee company are subject to excise duty. There is control of excise department where statement of production, consumption and stock of raw material has to be furnished regularly. The assessee does maintain stock register in respect of raw material purchased, consumed and stock of raw material. So long the scrap is not sold, it is accounted for as stock of raw material. This system is consistently followed by the assessee and accepted by the department. Invocation of proviso to section 145 only for non-maintenance of day-to-day stock register for scrap was wholly unjustified having regard to the fact that till the point of sale the scrap is accounted for as raw material for the reason mentioned hereinabove. The assessee, during the course of assessment proceedings, rightly accepted that no day-to-day stock register for scrap is maintained separately as the same is accounted for as stock of raw material. The entire exercise of addition is based on the only observation of the Ld. Assessing Officer. That the assessee is engaged in manufacturing of specified auto components of M/s Tata Motors resulting in generation of fixed quantity of scrap. This is wholly incorrect for which detailed submission has already been made. The assessee is not engaged for M/s Tata Motors alone. Items manufactured are also of different sizes and as per specification of various customers not necessarily resulting in generation of fixed quantity of scrap. The assessee in its written submission has given detailed process of entire working and various reasons for the difference in generation of scrap as also the value thereof which has not been found to be incorrect. In fact the report of the Ld. Assessing Officer, in substance is a piece of prose repeating all that is stated in the assessment order.

Under the circumstances the book result deserves to be accepted and there is no scope for application of proviso to section 145. Needless to say that there are several judicial pronouncements holding that proviso to section 145 cannot be applied only for the absence of stock register without further supporting materials.

For argument sake even in the case of estimate some guesswork maybe possible but not an arbitrary exercise of assessment powers as decided by the Hon'ble Supreme Court in the case of *Kanchwala Gems vs. Joint CIT* (2007) 288 ITR 10 (SC).

It is therefore, requested that the addition of Rs.2,58,865.58/- may kindly be deleted.

4.3 I have gone through the order of the learned AO as well as the remand report and the written submission made by the appellant. Para 2 of the order the AO has observed that the assessee is engaged in manufacturing of certain auto components as per specification given by M/s Tata Motors and supplying the same in totality to M/s Tata Motors at Jamshedpur.

Whereas the assessee in his submission stated that the assessee is not exclusively engaged in the manufacture of Auto components of M/s Tata Motors but the assessee is also producing components as per specification of other customers also.

The AO while estimating scrap @ 32.59% of total consumption of CR sheets 28744125 kg estimated scrap at 93,67,710 kg. this estimation is based on peak percentage of generation of scrap disclosed by the assessee in the month of December 2009. The AO further observed that the percentage of scrap should remain same whereas the percentage of scrap from April 2009 to March 2010 is different in each month. The Assessing Officer's observation as such is due to his conclusion that the assessee is manufacturing Auto components for Tata Motors exclusively. Whereas the assessee company is manufacturing Auto components for different company also. The assessee in his submission enclosed annexure 1 which shows the assessee has several customers such as Alkraft Thermo Technology Pvt. Limited, Bani Enterprises, Caparo Engineering Pvt. Ltd. Explorere Auto Enterprises Pvt Ltd. East Coast Railway, jagjeet Company, K.S. Industries, Omex Auto Ltd., Tata Cuimins Ltd., Tata Growth Shop, Tata Motors Ltd. Lucknow, Pune, Bangalore Faridabad, Tata Tayo Ltd., Tata Tayo Radiator Ltd., West Central Railway, Bhopal. Apart from Tata Motors Ltd., Therefore the AO observation that the assessee-company is doing exclusive work for Tata Motors Ltd., Jamshedpur is not correct. I also agree with the assessee that the generation of scrap is of fixed quantity in every month is also not correct as the scrap depends upon the quantity and specification of items to be manufactured as the cutting of different sizes will be deciding factor for generation of scrap. The assessee has further stated that there are parts where yield can be up to 90% of sheets used and at the same time there are parts where material manufactured is only 80% resulting in more scrap. It is further stated that the generation of scrap on the size of available raw material i.e Steel sheets and plates. Also I do not find that the method adopted by the AO is of any scientific or mathematical which ensures suppression of scrap. Therefore I do not find any merit in arriving at suppression of scrap by 2099387 kg by the assessee.

The next issue is adoption of rate. The assessee has disclosed sales of scrap @ 12.14/kg on an average basis of sales of scrap of 72,68,323, of scrap. The AO in his order stated at para 3.6 that the assessee has disclosed rate around Rs.10/kg which is also not correct as the AO himself found it @ 12.14/kg. Since the suppressed scrap of 2099387 kg has not been accepted. Therein supra, the sale of the same @ 12.14/kg is a presumption of the AO which is hereby dismissed. Accordingly the addition of rs.2,54,86,538/- is hereby deleted."

3. We have given our thoughtful consideration to rival contentions. A perusal of the instant case file reveals that assessee on its own declared profit on scrap sales amounting to Rs.72,68,323/-.The Assessing Officer enhanced the same on the premise that the scrap in question was a high quality one from Tata Motors group of companies. The assessee successfully proved during remand proceedings that the scrap was in fact pertained to many entities than only M/s Tata Motors. This clinching lower appellate finding on facts has gone unrebutted before us during the course of hearing. We

therefore affirm the CIT(A)'s above extracted reasoning deleting the estimated income addition of scrap sales in issue.

4. This Revenue's appeal is dismissed.

Order pronounced in accordance with Rule 34(4) of the ITAT Rules by putting on Notice Board on 15/02/2019

Sd/-

(लेखा सदस्य)

(Dr. A.L. Saini)

(Accountant Member)

Ranchi,

Sd/-

(न्यायिक सदस्य)

(S.S.Godara)

(Judicial Member)

*Dkp

दिनांक:- 15/02/2019 Ranchi I

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-ACIT, Cir-1, 47, C.H. Area, Jamshedpur
2. प्रत्यर्थी/Respondent-M/s Auto Profile Ltd, C-33,34 & 35, Phase IV,. Adityapur Industrial Area, Gamharia, Jamshedpur-832108
3. संबंधित आयकर आयुक्त / Concerned CIT Ranchi
4. आयकर आयुक्त- अपील / CIT (A) Ranchi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, / DR, ITAT, Ranchi
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

SR.PS, ITAT, RANCHI