

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
&SMT.MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 2272/Ahd/2014

(निर्धारण वर्ष / Assessment Year:2010-11)

ACIT Circle-1, JashonathChowk, Bhavnagar – 364 001	बनाम/ Vs.	M/s. Apollo Vikas Steel Pvt. Ltd. Jivan mention, Lati Bazar, Bhavnagar – 364 001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAF CA9 760 M		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थीओरसे/Appellant by :	Shri Mudit Nagpal , Sr. DR
प्रत्यर्थीकीओरसे / Respondentby:	Shri Vartik Chokshi, Biren Shah, AR

सुनवाईकीतारीख/Date ofHearing	19/06/2019
घोषणाकीतारीख /Date of Pronouncement	24/07/2019

आदेश/O R D E R

PER AMARJIT SINGH - AM:

The appeal filed by the Revenue for A.Y. 2010-11, arise from order of the CIT(A)-XX, Ahmedabad dated 16.05.2014, in proceedings under section 143(3)of the Income Tax Act, 1961; in short "the Act".

2. The fact in brief is that return of income declaring total income of Rs. 4,12,45,630/- was filed on 28.09.2010. Subsequently the case was selected under scrutiny by issuing notice u/s. 143(2) of the Act on 14.09.2011. The assessee was in the business of ship breaking and manufacturing of mild steel ingots. The further fact of the case are discussed while adjudicating the two grounds of appeal filed by the Revenue as under:-

“1. The Ld. CIT(A)-XX, Ahmedabad has erred on facts and circumstances of the case in accepting lumpsum amount of Rs. 10 lac as Unaccounted Sales instead of Rs. 55,00,000/- added by the AO u/s. 143(3) of the Act, even when CIT(A) has himself accepted that assessee has not disclosed sale of such machineries and even when AO has scientifically estimated the sale price of machineries referring to bills/invoices of other concerns.

2. The Ld. CIT(A)-XX, Ahmedabad has erred on facts and circumstances of the case in accepting lumpsum amount of Rs. 4 lac as Unaccounted Sales of oil instead of Rs. 21,99,935/- added by the AO u/s. 143(3) of the Act, even when assessee has failed to explain with evidence, the loss of oil measured initially and that CIT(A) has relied on merely theoretical submissions of the assessee.”

First Ground of Appeal:-

Lumpsum Addition on account of unaccounted sales (DG Sets):-

3. During the course of assessment proceeding the AO noticed that during the year under consideration the assessee has disclosed total sale of Rs. 53,08,22,797/- with gross profit of Rs. 6,67,81,915/- @ 12.58%. The AO observed that the gross profit declared was on higher side as compared to last year but the shortage claimed in ship breaking business by the assessee during the year under consideration was 11.48% as compared to shortage of 7.35% claimed in the immediate preceding year. The assessee explained that during the year the percentage of shortage was 11.48% while in the past year i.e. in the assessment year 2009-10 and assessment year 2007-08 it was 9.37% and 10.34 % respectively. The assessee explained that the small difference in percentage of shortage was there because there was very small amount of production in the earlier three year of 3996.090 M.T, however, during the year under consideration there was tremendous increase in the production of the assessee company which was at 26933.958 M.T. In view of the above the assessee explained that there was six time increased in the production and also there was substantial increased in the yield and there was also decrease in the shortage in the case of furnish division. The relevant part of the submission of the assessee is reproduced as under:-

<i>A.Y.</i>	<i>Raw Material</i>	<i>Yield</i>	<i>%of Yield</i>	<i>Shortage of%</i>
2007-08	5753 (M/T)	5217-505 (M/T)	90.66%	10.34%
2008-09	221-124 (M/T)	201-480(M/T)	91.12%	8.88%
2004-05	4782 (M/T)	4319.480 (M/T)	90.33%	9.67%
2009-10	2081-876(M/T)	1894.165 (M/T)	90.63%	9.37%
2009-10 <i>Furnesh Divi.*</i>	4327.111 (M/T)	3996.090 (M/T)	92.34%	7.66%
2010-11	20276 MT.	17948.48 MT	88.52%	11.48%
2010-11 <i>FurneshDivi.</i>	9698.719 MT	8955.910 MT.	92.65%	7.35%

The assessee has also explained that the process of ship breaking consisted of dismantling of ship by cutting, sorting, fabricating etc. and there was always shortage and wastage in production. However, the AO has not accepted the submission of the assessee, and he was of the view that assessee must have recovered at least two ship engine, six DG set beside other machinery therefore addition of Rs. 20,00,000/- was made for two main engine, Rs. 25,00,000/- for sale of five DG sets and Rs. 10,00,000/- was added for other type of machineries.

4. Aggrieved assessee filed before the Ld. CIT(A). The Ld. CIT(A) has restricted the addition stating that the AO has estimated the sale proceed without any basis therefore a lumpsum amount of Rs. 10,00,000/- was sustained by the Ld. CIT(A) considering the possible leakage of Revenue in respect of the item like engine, DG set, and other machinery etc.

Second Ground of Appeal :-

Lumpsum Addition on account of unaccounted sales (Oil):-

5. During the course of assessment proceedings the assessee was required to give detail of sale of different types of oil as reported at Para No. 6 of the assessment order by the AO. The assessee was also asked to explain the reason for difference in quantity of oil found in the different ships. The assessee has explained that there was no much difference of total quantity of oil. Most of the quantity of oil sold was tallied with the survey report and there was some leakage

shortage while unloading/handling and transferring oil from ship to floor and at the stage of transportation. The AO has not accepted the explanation of the assessee and worked out difference in sale and received of different type of oil as under:-

<i>Fuel Oil</i>	<i>1482600 ltr.</i>
<i>MGO</i>	<i>121530 ltr.</i>
<i>Lub. Oil</i>	<i>53300 ltr.</i>
<i>Sump Oil</i>	<i>34860 ltr.</i>

Thus there was difference in sale and receipt of different type of Oils as under-

<i>Fuel Oil</i>	<i>1524160 -1482600 = 41560 ltr.</i>
<i>MGO</i>	<i>134080- 121530 =12550 ltr.</i>
<i>Lub. Oil</i>	<i>96540-53300 =43240 ltr.</i>
<i>Sump Oil</i>	<i>26400-34860 = - 8460 ltr.”</i>

The AO has stated that there may be some consumption of oil during anchoring and beaching. Therefore, from the above difference 5000 fuel oil, 2000 MGO and 1000 Lub. Oil was considered as consumption during anchoring and beaching. After reducing this consumption figure the difference in oil remains of 36560 fuel oil 10550 MGO and 42240 of Lub. oil to the amount of Rs. 21,99,935/- was added to the total income of the assessee.

6. The assessee has filed before the Ld. CIT(A). The Ld. CIT(A) has partly allowed the appeal of the assessee and restricted the disallowance to the extent of Rs. 4,00,000/- in lumpsum on ad-hoc basis for want of verification to cover up the possible leakage.

7. During the course of appellate proceeding before us the Ld. DR has supported the order of AO.

8. On the other hand Ld. Counsel has furnished Paper Book comprising of various submission made before AO and CIT(A) during the course of assessment of appellate proceeding. The Ld. Counsel has contended that case of the assessee was covered by the order of ITAT Ahmedabad Co-ordinate Bench in the case of

the assessee itself for assessment year 2010-11 and the case of Saibaba Ship Breaking Corporation in ITA No. 2152/Ahd/2014.

We have heard both the side and perused the material on record. With the assistance of the Ld. Representative we have gone through the decision of Coordinate Bench of the ITAT in the case of the assessee itself vide ITA No. 2153/Ahd/2014. Wherein, the issue was decided in favour of the assessee after following the decision of Saibaba Ship Breaking Corporation vs. ACIT in ITA No. 2152/Ahd/2014. It is further noticed that assessee has produced its books of account along with audited accounts and other record however, the AO has not pointed out any discrepancy in the books of account maintained by the assessee. It is further noticed that assessee has also maintained day to day sale register showing the description of the goods, weight and maintain the excise records for ferrous and non-ferrous materials, and it is also observed that items obtained from different ships were not in uniform weight, quality, quantity and shapes and the main engine of the ship was sold in various parts of iron and steel. We further observe that the finding of the AO that assessee has sold the item out of books was not based on any relevant material. In the light of the above facts and circumstances and after considering the detailed finding of the Ld. CIT(A) we do not find any merit in the appeal of the Revenue. Accordingly, the appeal stand dismissed.

9. Regarding addition on account of unaccounted sales of oil it is noticed that AO has made computation on estimation basis. It is reported that the measurement of availability of oil was taken through measuring rod and the quantity of frozen waste at the ship was not considered which remained as a frozen waste at the bottom of tank. Further it was also reiterated that AO has not considered loss due to leakage and spillage. It is also stated that there was some consumption of oil when the ship was brought from high sea to the plot for breaking and when the ship was in the process of dismantling there was no guarantee that the assessee will get the same quantity of oil because there was not actual weighment done by the

custom official while inspecting the ship. The survey was carried out in the presence of custom authorities which at about 12 kilometre away from beaching point. When the measurement was taken through measure rod there was scope for variation in quantity of actual stock available in the bank. In the light of the above facts and circumstances we observe that there was no accuracy in the estimation made by the AO in respect of unaccounted sale of oil therefore we consider that Ld. CIT(A) was justified in restricting the unaccounted sale to the extent of Rs. 4,00,000/- on lumpsum basis for want of verification and to cover up the possible leakage. Accordingly, this appeal of the Revenue is also dismissed.

10. In the result, the appeal of the Revenue is dismissed.

This Order pronounced in Open Court on 24/07/2019

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad: Dated 24/07/2019

TANMAY

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

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।