

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

ITA No.503/Bang/2014
Assessment year : 2008-09

M/s Gogga Gurusanthiah & Bros., P.B.No. 4, Mine Owners & Mineral, Grinders, Nehru Co-Op Colony, Hospet – 583 203. PAN: AACFG 6895M	Vs.	The Deputy Commissioner of Income Tax, Circle I, Bellary.
APPELLANT		RESPONDENT

Appellant by	:	Shri Siva Prasad Reddy, IRS (Retd.)
Respondent by	:	Shri Vikas Suryavamshi, Addl.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	23.07.2019
Date of Pronouncement	:	31.07.2019

ORDER

Per N V Vasudevan, Vice President

This appeal by the assessee is against the order dated 22.01.2014 of the CIT(Appeals), Hubli relating to assessment year 2008-09.

2. The only issue for consideration in this appeal is as to, whether the revenue authorities were justified in not giving set off of Rs.2,22,19,400 and reducing the income from business to that extent while determining the total income for AY 2007-08.

3. The issue arises under following facts and circumstances. The assessee is a partnership firm engaged in the business of mining of iron ore. A Survey was conducted u/s 133A of the Income Tax Act, 1961 (Act) in the business premises of the Assessee on 05-01-2007. The findings in the course of such Survey were subject matter of order of assessment passed order u/s 143(3), dated, 24-12-2009 for the immediately preceding assessment year, 2007-08. In the course of Survey, the assessee declared 1,11,097 MTs of raw excavated material as excess stock during the Survey. The value of such excess stock was valued by the Assessee as on 05-01-2007 at Rs. 2,22,19,400/- by taking the cost of material as Rs. 200 per MT. The assessee filed the Return of Income for the said AY, 2007-08 on 12-11-2007 declaring total income of Rs. 18,62,39,540/-, which included the said additional income of Rs. 2,22,19,400/- attributable to the stock of 1,11,097 MTs declared during the Survey. The assessee did not make any changes/adjustments in the books of account on account of the said 1,11,097 MTs stock declared during the Survey and therefore, the additional income was admitted in the computation of income, as it did not form part of regular profits as per the books of account.

4. The Learned AO enhanced the valuation to Rs. 260 per MT as against the rate of Rs. 200 per MT declared during the Survey, which resulted in the addition of Rs. 66,85,220/- in the assessment order u/s 143(3) dated, 24-12-2009. However, this addition was omitted to be included in the computation of total income in the said order and therefore, the same was rectified by passing the order u/s 154, dated; 18-01-2010.

5. Apart from the above, there was closing stock of 1,40,864.41 MTs of iron ore and Red-Oxide declared in the books of account, which was also valued at cost of Rs. 200 per MT. But the Learned Assessing Officer did not agree with this valuation and he therefore enhanced the valuation to Rs. 260 per MT, which resulted in the addition of Rs. 87,73,687/-. The Learned Assessing Officer has also mentioned in the assessment order for AY 2007-08 that the assessee is entitled to carry forward the value of closing stock added back as income for the AY 2007-08 as the opening stock in the following AY 2008-09. The observation of the AO in this regard was as under:

"The assessee is entitled to carry forward of the value of the closing stock which is added back to the income of the assessee for the previous year relevant to AY: 2007-08 to the next FY: 2007-08 relevant to AY: 2008-09."

6. The amounts of stock valuation forming part of the closing stock as on 31-03-2007 to be carried forward as opening stock as on 01-04-2007 for set-off in the present assessment year, 2008-09 are as under:

Sl.No.	Particulars	Amount (in Rs)
(a).	The value of stock 1,11,097 MTs not recorded in the books of account and declared during the Survey at Rs. 200 per MT.	2,22,19,400/-
(b).	The enhanced value as per the order u/s 143(3) r.w. order u/s 154, dated, 18-01-2010 for the AY: 2007-08.	66,85,220/-
(c).	The enhanced value of stock as per the books of account:	
	(i) 140864.14 MTs	87,73,687/-
	(ii) 1635 MTs of Red-Oxide	65,400/-

	(iii) Value of — HDPE Bags	1,10,889/-
Total		3,78,54,596/-

7. In the Assessment completed for AY 2008-09, the Assessing Officer allowed set-off only in respect of enhanced value of stock mentioned in (b) and (c) of para 1.6 above i.e., Rs. 1,56,35,196/- (66,85,220 + 89,49,976) and not considered the value of Rs. 2,22,19,400/- declared during the Survey and admitted in the Return of Income for the AY: 2007-08. The Assessee had in the revised return of income filed for AY 2008-09 set off the sum of Rs.1,55,35,136 and the additional income of Rs.2,22,19,400 was set off in the original return of income. The AO proceeded to compute the total income on the basis of the profit as per profit and loss account without adopting the income declared in the return of income.

8. Usually the quantity of raw material would form part of the stock and would be taken into consideration while arriving at the profit as per the profit and loss account. However in the case of the Assessee the excess stock of raw material found at the survey which was subject matter of assessment in AY 2007-08 was not taken into the books for the following reasons viz., the raw excavated material enters the process of production only when it is separated at the initial level as ore-bearing material and mud-waste. Once ore-bearing material is separated, it undergoes various stages of production including crushing, sizing, screening, grading etc. It is taken into the books of account only when ore-bearing material is separated from the mud-waste, as it enters production only at this stage. This is also consistent with our

accounting policy followed over the years consistently. What was declared during the Survey u/s 133A i.e., 1,11,097 MTs was only raw excavation from the mines before it was segregated as above mentioned. Subsequently, when it enters production, it is recorded in the books of account. As per the IBM norms, whatever, is excavated, including raw material before it is separated from mud-waste is required to be reported in the returns. The survey disclosure was based on the quantity reported in the IBM returns, which included the said 1,11,097 MTs of raw excavation. When the Assessee filed the original Return of Income the total additional income on account of excess stock of raw material found at the time of survey was included in the statement of income and the value was not in the closing stock. In the revised return of income filed, the value the value of stock declared during the time of survey was set off against the income. **In other words, the quantity of stock/its value was not taken in the closing stock as on 31.03.2007 and accordingly it did not form part of the opening stock as on 01.04.2007 in the present assessment year.**

9. It was the plea of the Assessee that the closing stock and its value as on 31-03-2007 would be the opening stock as on 01-04-2007 and this is well settled principle laid down by the Hon'ble High Court of Calcutta in the case of *Chainrup Sampatram vs. CIT (1951) 20 ITR 484 (Calcutta)* in which was held:

'But such contingencies are provided for by the fact that what is the closing stock of one year becomes necessarily the opening stock of the next year so that whatever advantage or disadvantage may be acquired or suffered by the stock valuation for one year can be counterbalanced in the year next following.'

The Hon'ble Apex Court (Larger Bench) affirmed the said decision in its landmark decision in the case of *Chainrup Sampatram v. CIT (1953) 24 ITR 481 (SC)*. The Hon'ble Apex Court has reiterated this settled principle in its recent decision in the case of *Deccan Mining Syndicate (P.) Ltd. (2019) 104 taxmann.com 111(SC)* holding that the excess stock declared as closing stock in a particular year would be taken as opening stock at the beginning of the next year and therefore, the tax effect of such alleged excess stock was 'Nil' and thus it was a tax neutral entry.

10. On the above factual aspect, the AO did not mention anything in the order of assessment about the claim of set off of Rs.2,22,19,400. The CIT(Appeals) however did not appreciate the aforesaid contentions put forth by the assessee before the CIT(A) and he confirmed the order of AO on the following reasons:-

“I have gone through the facts of the case, contents of the assessment order and written submissions of the assessee. The assessee has claimed set off of 'The additional income disclosed during the survey on account of stock difference as on date of survey at Rs. 2,22,19,400/- which was declared in the return separately for the AY 2007-08 and the claim of the assessee is the said disclosure relates to the closing stock considered for the AY 2007-08 and therefore corresponding set off in respect of the additional income declared on stock difference to be considered. On discussion and considering the assessment records for the AY 2007-08, the assessee's claim of set off against difference in valuation of closing stock is allowed to the extent of the amount specifically added as difference in closing stock in the assessment order and rectification order, which aggregates to Rs. 1,56,35,196/-. During the course of assessment for the AY 2008-09 the AO proposed to disallow the amount of claim for Rs. 2,22,19,400/- being the value of closing stock offered as additional income at the time of survey on 05.01.2007 but agreed and allowed only enhanced value of closing stock amounting to

Rs. 66,85,220/- and the additional income offered on account of the value of the closing stock Rs. 2,22,19,400/- it was offered by the assessee at the time of survey u/s 133A of the IT Act and the AO has added the same to the total income, is appropriate. Hence the addition made by the AO is **upheld** and assessee's ground of appeal is dismissed."

11. Aggrieved by the order of the CIT(Appeals), the assessee is in appeal before the Tribunal. We have heard the rival submissions and are of the view that in light of the specific observations of the AO while concluding the assessment for AY 2007-08 that assessee is entitled to carry forward the value of closing stock which is added back to the income of assessee for AY 2007-08 in AY 2008-09, the AO ought to have given appropriate set off. In fact the AO has given such a set off in respect of enhanced value of stock as per books of account as well as the enhanced value of stock which was found in excess at the time of survey, but did not extend the same benefit in respect of stock found at the time of survey which was valued at Rs.200 / metric ton. This was clearly impermissible in law. As rightly stated by the ld. counsel for the assessee, law is well settled that closing stock of an accounting year ought to be opening stock of following year, as held by the Hon'ble Supreme Court in the case of *Chainrup Sampatram (supra)*. In the light of the admitted factual position and legal position as explained in the earlier paragraphs of this order, we hold that assessee is entitled to benefit of deduction to the extent of Rs.2,22,19,400. The AO is accordingly directed to give set off as claimed by the assessee.

12. In the result, the appeal by the assessee is allowed.

Pronounced in the open court on this 31st day of July, 2019.

Sd/-

(JASON P. BOAZ)
Accountant Member

Sd/-

(N.V. VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 31st July, 2019.
/ Desai Smurthy /

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.