

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'A' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Vice-President
and Shri Satbeer Singh Godara, Judicial Member**

**I.T.A. No. 685/KOL/2018
Assessment Year: 2008-2009**

***Assistant Commissioner of Income Tax,.....Appellant
Central Circle-4(2), Kolkata,
Aayakar Bhawan Poorva, 5th Floor, Room No. 506,
110, Shanti Pally, Kolkata-700107***

-Vs.-

***M/s. Narbheram Vishram,.....Respondent
Gua, Singhbhum West, Jharkhand-833213
[PAN:AABFN7217R]***

&

**C.O. No. 58/KOL/2018
(arising out of I.T.A. No. 685/KOL/2018)
Assessment Year: 2008-2009**

***M/s. Narbheram Vishram,.....Cross Objector
Gua, Singhbhum West, Jharkhand-833213
[PAN:AABFN7217R]***

-Vs.-

***Assistant Commissioner of Income Tax,.....Respondent
Central Circle-4(2), Kolkata,
Aayakar Bhawan Poorva, 5th Floor, Room No. 506,
110, Shanti Pally, Kolkata-700107***

Appearances by:

*Shri Dhrubajyoti Roy, JCIT, for the Department
Shri A.K. Tibrewal, FCA & Shri Amit Agarwal, Advocate, for the assessee*

Date of concluding the hearing : January 07, 2020
Date of pronouncing the order : February 21, 2020

O R D E R

Per Shri P.M. Jagtap, Vice-President:-

This appeal is preferred by the Revenue against the order of Id. Commissioner of Income Tax (Appeals)-21, Kolkata dated 29.01.2018 and

the same is being disposed of along with the Cross Objection filed by the assessee being C.O. No. 58/KOL/2018.

2. The assessee in the present case is a partnership firm, which is engaged in the business of Mining of Iron Ore. In the assessment originally completed under section 153A/143(3) of the Income Tax Act, 1961 vide order dated 13.12.2012, the total income of the assessee was determined by the Assessing Officer at Rs.62,77,25,190/-. The assessment was subsequently reopened by the Assessing Officer on the basis of information available in Justice M.B. Shah Commission's report on illegal mining received from the office of DGIT (Investigation), which revealed that the assessee-firm had understated its actual production of quantity of iron ore for the year under consideration to the extent of 10,761 Metric Ton valued at Rs.2,79,29,422/-. The Assessing Officer accordingly issued a notice under section 148 on 17.02.2015 after recording the reasons. During the course of assessment proceedings, it was submitted on behalf of the assessee that the difference in the production of iron ore as allegedly pointed out by the Assessing Officer in the audited account was due to inter-grouping error. It was also submitted that the production of iron ore as shown in Shah Commission's report was erroneous. In order to verify this aspect, a notice under section 133(6) of the Act was issued by the Assessing Officer to the Manager of Paradeep Port Trust through which the iron ore was exported by the assessee. As per the reply received by the Assessing Officer from Paradeep Port Trust, total quantity of iron ore exported by the assessee during the year under consideration was 3,90,872 Metric Ton. Since the assessee had shown the total export of 3,82,872 Metric Ton in its books of account for the year under consideration, the Assessing Officer required the assessee to explain the difference in the export of iron ore to the extent of 8,000 Metric Ton. In reply, it was submitted by the assessee that the details of export of iron ore were also given by Paradeep Port Trust in their reply

for other years. It was pointed out that the export shown by Paradeep Port Trust in their reply was less by 23,000 Metric Ton and 47,600 Metric Ton in the previous year relevant to assessment years 2009-10 and 2010-11 respectively than the export shown by the assessee. It was submitted that the Paradeep Port Trust thus might have shown some of the exports of A.Y. 2009-10 in the year under consideration i.e. 2008-09. This explanation offered by the assessee was not found acceptable by the Assessing Officer. He held that the difference of 8,000 Metric Ton in export was not properly reconciled by the assessee and by treating the same as the suppressed export sale of the assessee for the year under consideration, the value thereof amounting to Rs.2,93,18,510/- was added by him to the total income of the assessee in the assessment completed under section 147/143(3)/153A of the Act vide order dated 30.03.2016.

3. Against the order passed by the Assessing Officer under section 147/143(3)/153A of the Act, an appeal was preferred by the assessee before the Id. CIT(Appeals) challenging the validity of the assessment made by the Assessing Officer as well as disputing the addition of Rs.2,93,18,510/- made to its total income on account of the alleged suppression of export sale.

4. After considering the submissions made by the assessee and perusing the material available on record, the Id. CIT(Appeals) did not find merit in the issue raised by the assessee challenging the validity of the assessment made by the Assessing Officer under section 147/143(3)/153A and rejecting the case of the assessee on this issue, he upheld the validity of the order passed by the Assessing Officer under section 147 for the following reasons given on pages 10 & 11 of his impugned order:-

"1. I have carefully considered the additional grounds taken by the appellant in the course of the hearing. In these grounds it has been contended that the Ld AO has erred in assuming jurisdiction in this case under section 147/148 of

the Income Tax Act, 1961 in absence of the mandatory conditions for assuming jurisdiction under section 147/148 of the Income Tax Act, 1961. It has been further contended that the impugned Notice issued by the Ld AO under section 148 of the Income Tax Act, 1961 on 12th March, 2015, in the case of the assessee, was invalid, illegal, without jurisdiction and void ab initio and therefore the impugned assessment order passed by him under section 147/143(3)/153A of the Act, in pursuance to such invalid notice is liable to be quashed. I have carefully considered the submissions of the Ld. ARs of the appellant and the reasons recorded by the Ld. AO for reopening the income-tax assessment for the relevant A.Y. 2008-09. In the present case the proceedings u/s 147 were initiated after 4 years. The notice was issued after the expiry of four years from the end of the relevant assessment year and therefore it was necessary to ensure that conditions prescribed in the first proviso to Section 147 were attracted. In terms of the said first proviso the assessment could have been reopened only if there was failure on the part of the assessee to disclose truly and fully all the facts necessary for assessing total income, which was chargeable to tax for the relevant assessment year. In the present case in the objections raised at appellate stage, the Ld. ARs claimed that the Ld. AO did not provide the appellant with recorded reasons within reasonable time and thereafter when the objections were filed he disposed the objections by passing an order in the perfunctory manner and that also just before the assessment was getting barred by limitation. According to the Ld. ARs of the appellant, the acts of the Ld. AO were designed with pre-meditated decision to complete the reassessment proceedings in violation of principles of natural justice.

2. *In my considered opinion the Income-tax Act, 1961 nowhere stipulates the time limit for disposing the objections raised by the assessee to the reasons recorded u/s. 148, Even the requirement for disposal of objections is a procedural requirement mandated by the Hon'ble Supreme Court in its decision reported In GKN Driveshafts (India) Ltd. vs. ITO (259 ITR 19). In the circumstances therefore so long as the Ld. AO passed an order disposing the objections raised, It was sufficient compliance with the requirements laid down by the Hon'ble Supreme Court and the mere delay in disposing the objections cannot be the reason to hold the assessment invalid in law.*

3. *In the written submissions much emphasis was placed on the fact that in the course of regular assessment u/s 143(3) of the Act, the appellant had furnished details as requisitioned by the Ld. AO and as such there was no failure on the part of the assessee to disclose truly & fully all facts necessary for assessment. From the reasons set out under*

Section 148, I find that the assessment was reopened pursuant to certain information reaching Id. AO about certain incomes escaping assessment on the basis of the Justice M.B. Shah Commission report. The said order and information was passed on to the Id. AO and therefore, the same constituted fresh tangible material for reopening the assessment to verify the amounts specified in the Commission Report. In view of the above, it noted that the formation of belief on the Id. AO's part had a live & direct nexus with the information available in the report and such nexus could not be considered to be far-fetched or irrelevant, At the stage of formation of belief, it was not necessary for the Ld. AO to come to conclusion or prove that the amount was actually suppressed or that the inferences drawn by the Shah Commission were true and correct. At the stage of initiation of proceedings u/s 148 /147, all that the Ld. AO was required to demonstrate was that he was in possession some credible & tangible material on the basis of which a prudent person properly instructed in law and on facts would have formed reason to believe that income had escaped assessment. Therefore applying the true test regarding disclosure of all material facts truly and fully, I am of the considered view and opinion that such disclosure was not made by the appellant when the order u/s 143(3) was passed.

4. For the foregoing reasons therefore I am of the opinion that the Ld. AO rightly invoked provisions of Section 147 before issuing notice u/s 148 of the Income Tax act, 1961. Since, I have held that the initiation of proceedings u/s 148 was valid and proper, the consequent order passed u/s 147/143(3)/153A dated 30,03.2016 is also held to be valid. Accordingly, I do not find merit in the additional Grounds Nos. 1 & 2, and the same are therefore dismissed”.

5. The Id. CIT(Appeals), however, found merit in the submission made on behalf of the assessee in support of its case that the addition of Rs.2,93,18,510/- made on account of the alleged suppression of export sale was not sustainable and deleted the same for the following reasons given on pages 15 to 18 of his impugned order:-

“4. I have carefully perused the submissions filed by the appellant against the impugned observations of the Ld. AO. The question to be addressed is whether the figures shown by the Paradeep Port Trust are to be taken at face value as sacrosanct. I find that the Ld. AO himself does not believe so, as in certain other years he has adopted the figures disclosed by the appellant when they are higher. In my considered view the Ld. AO cannot pick and choose figures from either the Port Trust statement or the appellant's

statement, as per his convenience. I find .that in this subject A.Y, the Ld AO has taken the figures of the Port Trust, but in two succeeding year AY 2009-10 & 2010-11, he has taken the figures from the assessee's books of accounts, and discarded figures offered by the Port Trust were on the lower side vis-a-vis the figures disclosed by the appellant. Therefore, from the factual matrix it emerges that the Ld. AO has himself not considered the figures offered by the PPT as sacrosanct, and rather he has been compelled to take which ever figures were higher.

5. It may be worthwhile to reproduce the information as received by the Ld. AO from the Port Trust, the documents leading to the dispute.

Khatau Narbheram & Co. Narbheram Vishram

<i>Fin. Year</i>	<i>Quantity in mt.</i>	<i>FOB value in Rs.</i>	<i>Quantity in Mt.</i>	<i>FOB value in Rs.</i>	<i>Total(1&2)</i>
<i>2006-07</i>	<i>161857</i>	<i>355979433</i>	<i>0</i>	<i>0</i>	
<i>2007-08</i>	<i>346263</i>	<i>1280137601</i>	<i>44609</i>	<i>152335484</i>	<i>390872</i>
<i>2008-09</i>	<i>187569</i>	<i>697111558</i>	<i>56500</i>	<i>148844316</i>	<i>244069</i>
<i>2009-10</i>	<i>75758</i>	<i>316399811</i>	<i>146855</i>	<i>392801017</i>	<i>222613</i>
<i>2010-11</i>	<i>137400</i>	<i>724477735</i>	<i>34340</i>	<i>159440611</i>	
<i>2011-12</i>	<i>27600</i>	<i>189242820</i>	<i>75800</i>	<i>440429125</i>	
<i>2012-13</i>	<i>NIL</i>	<i>NIL</i>	<i>NIL</i>	<i>NIL</i>	
<i>2013-14</i>	<i>43200</i>	<i>221878440</i>	<i>NIL</i>	<i>NIL</i>	
<i>2014-15</i>	<i>NIL</i>	<i>NIL</i>	<i>NIL</i>	<i>NIL</i>	

The differences that emerge as follows:

1. In the A.Y 2008-09, the PPT has shown total figure of export of 3,90,872 MT, whereas the appellant has shown figure of 3,82,872 MT, there being negative figure of 800 MT in the books of the assessee.

2. In the A.Y 2009-10, the PPT has shown total figure of export of 2,44,069 MT, whereas the appellant has shown figure of 2,67,069 MT, there being positive figure of 23,000 MT in the books of the assessee.

3. In the A.Y 2010-11, the PPT has shown total figure of export of 2,22,613 MT, whereas the appellant has shown figure of 2,70,213 MT, there being positive figure of 47,600 MT in the books of the assessee.

4. The above clearly brings forth the merit in the appellant's contentions that the figures of the Port Trust were not reliable, as there are differences for every year analysed, and the Ld AO has selectively picked the figure for the subject AY 2008-09 only for the reason that the figure offered by the PPT was more by 800MT than the figure disclosed in the books of accounts of the assessee-appellant.

6. I have also considered the matter from the angle of possibility, namely whether there is any evidence available with the Ld. AO that there has been production beyond the disclosed amounts in the books which could have benne exported, It is observed that the figures of production of iron ore as disclosed by the Assessee-Firm in the audited books of accounts have been accepted by the Assessing Officer. The Ld AO has himself accepted the figures of production by noting in the assessment order (Note 1, relevant for subject AY 2008-09) that the

production as per Form No H-1 filed by the appellant was acceptable, as the "Regional Controller of Mines has confirmed that their Office has no information about the basis on which the Shah Commission had inferred different production (i.e. 11,74,680 MT as per assessee, and 11,85,441 as per the Justice Shah Commission Report). Hence, their Office is not in a position to certify the figures mentioned in the Shah Commission Report. In view of that the production figure as per H-1 is taken to be true." Therefore, it is apparent that the Competent Authority, namely the Regional Controller of Mines has already certified the production. As such there is very less possibility of unreported production by the assessee contributing towards the alleged excess and suppressed export sales.

7. The appellant-firm has also been able to submit the exact break up of exports to various parties realised through the Paradeep Port Trust. The bill dates, the names of the parties, the quantity and value as per shipping bills have also been mentioned. The said details are as under:

M/s. Narbheram Vishram
Details of exports from the Paradeep Port during the
FY 2007-08 (AY 2008-09)

Bill Date	Party's Name	Qty (MT)	FOB Value as per shipping bill (Rs.)
04.04.2007	Citic Australia Commodity Trading Pvt. Ltd.	17500	43721563
27.05.2007	Visa Comtrade AG	21612	49449120
08.06.2007	Visa Comtrade AG	45630	137464299
23.06.2007	Sacvinam Global Ltd.	4811	8940762
03.07.2007	Sacvinam Global Ltd.	10400	25512115
17.07.2007	Golden World Enterprise Ltd.	3500	10027001
28.07.2007	Golden World Enterprise Ltd.	15000	42528840
12.08.2007	Visa Comtrade AG	22800	52991669
05.09.2007	Visa Comtrade AG	13009	30760352
07.10.2007	Golden World Enterprise Ltd.	26900	103239994
26.10.2007	Golden World Enterprise Ltd.	24700	94230327
04.12.2007	Visa Comtrade AG	18695	83076227
25.12.2007	Golden World Enterprise Ltd.	25800	122355520
09.01.2008	Golden World Enterprise Ltd.	15500	73508161
24.01.2008	Visa Comtrade AG	14050	63498975
22.01.2008	Golden World Enterprise Ltd.	16050	72537975
28.01.2008	Visa Comtrade AG	30900	139652550
14.02.2008	Golden World Enterprise Ltd.	24201	116803997
26.02.2008	Golden World Enterprise Ltd.	20000	80680320
29.03.2008	Golden World Enterprise Ltd.	11814	51779344
		382872	140,27,59,111

8. Accordingly, it is seen that the appellant has been able to list out the various parties to whom export sales have been effected. There is merit in the submissions of the appellant that the assessee cannot be expected to submit a reconciliation statement, as he has submitted all

the nitty-gritty details. In my considered opinion, it was the Ld. AO to call for and obtain the details of the figures offered by the PPT, so that the differences of 800 MT along with details could have been offered to the appellant for reconciliation. The details ought to have included the names and/or details of the importers of the 8000 MT of iron ore allegedly exported by the Assessee Firm. This has not been done by the ld. AO.

9. I agree with the appellant/ Ld A.R that the appellant cannot be expected to discharge an impossible burden, as in such nebulous situations, the onus would be on the person who alleges, and not on the person against whom an allegation is made, especially when the threadbare details have been offered. The Hon'ble Bombay High Court very long back, In the case of CIT Vs Bombay Trust Corporation 6 ITR 445 (Bom) had so observed, and in my considered view the same still stand on a firm footing. The maxim "lex non cogit as impossibilla" or that the law cannot compel a person to perform the impossible is, in my considered observation applicable In this case. In the case of Krishnaswamy S. Pd. -vs.- Union of India [2006] 201 CTR (SC) 183 : [2006] 281 ITR 305 (SC), the Hon'ble Supreme Court has held that the maxim actus curiae neminem garvabit, i.e., an act of Court shall prejudice no man, is founded upon justice and good sense which serves a safe and certain guide for the administration of law. The other relevant maxim is lex non cogit dimpossibilia - the law does not compel a man to do what he cannot possibly perform. The law itself and its administration is understood to disclaim as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of law must adopt that general exception in the consideration of particular cases. The reliance of the Ld. A.R on the decision of Hon'ble Supreme Court in the case of Krishnanand vs The State Of Madhya Pradesh [AIR 1977 se 796] /(1977) 1 SCC 816 is found to be relevant in the emergent circumstances of the case, and in my considered view no burden to reconcile the alleged differences between his own figures and those supplied by the Port Trust for the subject Assessment Year lay on the appellant-firm.

For the reasons set out in the foregoing therefore, I am unable to agree with the action of the Ld. AO in making the impugned allowance of Rs.2,93,18,510/-, which stand deleted. Ground No. 1 taken by the appellant-firm stands allowed".

Aggrieved by the relief allowed by the ld. CIT(Appeals) to the assessee, the Revenue has preferred this appeal before the Tribunal, while the assessee has also filed its Cross Objection raising the issue of validity of the assessment made by the Assessing Officer under section 147/143(3)/153A of the Act.

6. In support of the issue raised in the Cross Objection of the assessee challenging the validity of the assessment made by the Assessing Officer under section 147/143(3)/153A of the Act, the Id. Counsel for the assessee contended that the original assessment in the assessee's case for the year under consideration was completed by the Assessing Officer under section 153A/143(3) of the Act. He submitted that the said assessment was reopened by the Assessing Officer on 17.02.2015, i.e. that the expiry of four years from the end of the relevant assessment year and as per the first proviso to section 147, such reopening after the expiry of four years from the end of the relevant assessment year was permissible only when any income chargeable to tax had escaped assessment by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the relevant assessment year. He invited our attention to the reasons recorded by the Assessing Officer as given on page 2 of his paper book and submitted that no such failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment for the year under consideration was specifically pointed out by the Assessing Officer. By relying on the various judicial pronouncements, he contended that the reopening of the assessment originally completed under section 153A/143(3) of the Act after the expiry of four years by the Assessing Officer thus was bad-in-law and the assessment completed under section 153A/143(3)/147 in pursuance thereof is liable to be cancelled being invalid.

7. The Id. D.R., on the other hand, submitted that the assessee as per the information received by the Assessing Officer had suppressed its actual quantity of production of iron ore and this information by itself was sufficient to show the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the year under consideration. He contended that not only the factum of

suppressed production of iron ore was pointed out by the Assessing Officer in the reasons recorded but even the quantum of the same was specifically given by him along with the corresponding value, which formed the basis of his reason to believe that income of the assessee to that extent had escaped assessment due to the failure of the assessee to disclose fully and truly the production of iron ore during the year under consideration. He has contended that the statutory requirement in terms of proviso to section 147 thus was duly satisfied by the Assessing Officer and the reopening of assessment by him after the expiry of four years was in accordance with law.

8. We have considered the rival submissions and also perused the relevant material available on record. In order to decide this preliminary issue raised by the assessee in its Cross Objection relating to the validity of the reopening of assessment in the light of the contentions raised by the Id. Representatives of both the sides, it would be relevant to refer to the reasons recorded by the Assessing Officer, which are extracted below:-

"After comparing the Information regarding actual production gathered from the Report of Justice M. B. Shah Commission on illegal mining and Statutory Audited Account of the assessee firm, it was observed that the assessee firm has suppressed its actual quantity of production of Iron Ore to the tune of 10,761 MT valued at Rs.2,79,29,422/- (@Rs.2595.43 per MT which is arrived at taking the amount of total sales as per P&L Account divided by total quantity of sales i.e. Rs.2788508797.70/1074392.88). The assessee firm has shown production of Iron Ore of 11,74,680 MT in its statutory audited account for the F,Y, 2007-08 relevant to AY. 2008-09 whereas from the M.B, Shah Commission Report at Page No. 325, Annexure-Z, Vol.-II/A of 1st report on Odisha, it reveals that actual production of Iron Ore of the assessee company in the same period was 11,85,441 MT. Hence, the production of Iron Ore remains undisclosed in the books of account of the assessee firm, worked out to 10,761 MT valued at Rs. 2,79,29,422/- for the A.Y. 2008-09.

On perusal of details on export quantity value of cargo (Iron Ore) exported from Paradeep Port received from Paradip Port Trust, Paradip Port, it is seen that the actual quantity of export

of tile iron ore from Paradip Port, by the captioned assessee in FY 2007-08 relevant to AY 2008-09 was 1,28,01,37,601 MT whereas in the assessee's books of account, it is reflected as 93,64,98,243 MT. Hence the quantity of export of iron ore to the tune of 34,36,39,358 MT remained undisclosed in the books of account of the assessee firm for the AY 2008-09.

Considering the above, I have reason to believe that income to the tune of Rs.37,15,68,780/- chargeable to tax has escaped assessment in AY 2008-09”.

9. A perusal of the reasons recorded by the Assessing Officer shows that the information in the form of report of Justice M.B. Shah Commission on illegal mining was received by him giving actual production of iron ore by the assessee-firm. From the said information, it was gathered by the Assessing Officer that the assessee-firm had suppressed its actual production of iron ore for the year under consideration to the tune of 10,761 Metric Ton valued at Rs.2,79,29,422/- . It is thus clear that the factum as well as quantum of suppression of production of iron ore was noticed by the Assessing Officer from the information received by him in the form of report of Justice M.B. Shah Commission on illegal mining and keeping in view that the production of iron ore to that extent had remained undisclosed by the assessee in its books of account, a belief was found by the Assessing Officer that income of the assessee had escaped assessment and the assessment was reopened by him after recording the reasons. The failure on the part of the assessee to disclose fully and truly the actual quantity of production of iron ore, which was a material fact necessary for its assessment for the year under consideration thus was clearly pointed out by the Assessing Officer in the reasons recorded and since the escapement of income chargeable to tax for the year under consideration was by reason of such failure on the part of the assessee, we are of the view that the reopening of assessment by the Assessing Officer after the expiry of four years from the end of the assessment year under consideration was in accordance with the relevant provisions of the Act including the 1st Proviso to Section 147. We,

therefore, find no infirmity in the reopening of assessment as made by the Assessing Officer on the basis of reasons recorded by him and upholding the validity of the same, we dismiss the Cross Objection filed by the assessee.

10. Now we take up the appeal of the Revenue being **ITA No.685/KOL/2018**, which involves a solitary issue relating to the deletion by the Id. CIT(Appeals) of the addition of Rs.2,93,18,510/- made by the Assessing Officer on account of the alleged suppression of export sales.

11. The Id. D.R. submitted that the export of iron ore by the assessee-company through Paradeep Port Trust during the year under consideration as reported by the Paradeep Port Trust itself in response to the enquiry directly made by the Assessing Officer was 3,90,872 Metric Ton as against the export of 3,82,872 Metric Ton shown by the assessee-company in its books of account. He submitted that this difference could not be explained satisfactorily by the assessee-company inspite of sufficient opportunity given by the Assessing Officer during the course of assessment proceedings. He contended that the onus in this regard was on the assessee to explain the difference of 8,000 Metric Ton in the export of iron ore as pointed out by the Assessing Officer from the relevant information received from Paradeep Port Trust and since the assessee had failed to discharge the said onus, the addition on account of the said difference by treating the same as suppression of export sale by the assessee was rightly made by the Assessing Officer. He contended that the Id. CIT(Appeals), however, put the onus on the Assessing Officer by observing that the Assessing Officer ought to have obtained the details of figures reported by Paradeep Port Trust and furnished the same to the assessee so that the difference of 8,000 Metric Ton in the export of iron ore could have been explained by the assessee. He submitted that the

assessee-company was regularly exporting the iron ore through Paradeep Port Trust and the difference in export as pointed out by the Assessing Officer should have been reconciled by the assessee by obtaining the relevant details from Paradeep Port Trust. He contended that the difference in export of iron ore reported by Paradeep Port Trust for the subsequent two years as pointed out by the assessee was not relevant to decide this issue and since the onus to explain the difference of 8,000 Metric Ton in export of iron ore for the year under consideration was not satisfactorily discharged by the assessee, the Id. CIT(Appeals) was not justified in deleting the addition made by the Assessing Officer on this issue.

12. The Id. Counsel for the assessee, on the other hand, fully supported the impugned order of the Id. CIT(Appeals) giving relief to the assessee on this issue. He submitted that the relevant quantitative details of the export of iron ore through Paradeep Port Trust during the year under consideration were fully furnished by the assessee before the Id. CIT(Appeals) and having satisfied with the same, the allegation made by the Assessing Officer on the basis of figures reported by Paradeep Port Trust was held to be unsustainable by the Id. CIT(Appeals). He contended that the fact that export of iron ore of the assessee-company as reported by Paradeep Port Trust was actually less than the export shown in the books of account of the assessee for the immediately succeeding two years was sufficient to show that the figures reported by Paradeep Port Trust to the Assessing Officer were not reliable as rightly observed by the Id. CIT(Appeals). He submitted that the Assessing Officer did not obtain the details of export of iron ore by the assessee-company for the year under consideration as reported by Paradeep Port Trust and compare the same with the details of export of iron ore as reflected in the books of account of the assessee. He contended that the Assessing Officer thus failed to support and substantiate the allegation made by him regarding

suppression of export sale by the assessee and the ld. CIT(Appeals) was fully justified in deleting the addition made by the Assessing Officer on the basis of unsupported and unsubstantiated allegation regarding suppression of export sale by the assessee.

13. We have considered the rival submissions on this issue and also perused the relevant material available on record. It is observed that the relevant details of export of iron ore as made by the assessee during the year under consideration through Paradeep Port Trust were obtained by the Assessing Officer by making a direct enquiry with the Paradeep Port Trust. As reported by Paradeep Port Trust, the assessee-company had made total export of 3,90,872 Metric Ton of iron ore during the year under consideration and since the export of 3,82,872 Metric Ton was shown by the assessee in its books of account, there was a difference in export of iron ore to the extent of 8,000 Metric Ton, which the Assessing Officer required the assessee to explain. In reply, it was explained by the assessee that the export of iron ore as reported by Paradeep Port Trust was less than the export for the immediately succeeding two years as shown by the assessee in its books of account and there was a possibility that Paradeep Port Trust might have included some of the exports of the immediately succeeding year, i.e. A.Y. 2009-10 in the year under consideration i.e. A.Y. 2008-09. In our opinion, this explanation offered by the assessee was not sufficient to reconcile the difference of 8,000 Metric Ton in export of iron ore as pointed out by the Assessing Officer for the year under consideration on the basis of information received directly from Paradeep Port Trust and the onus that lay on the assessee to explain the said difference could not be said to be satisfactorily discharged.

14. As rightly submitted by the ld. D.R., the assessee was regularly exporting iron ore through Paradeep Port Trust and in order to reconcile

the difference of 8,000 Metric Ton in the export for the year under consideration, it should have obtained the relevant details from Paradeep Port Trust to point out specifically the export of 8,000 Metric Ton of iron ore for the immediately succeeding year i.e. A.Y. 2009-10, which according to the assessee was wrongly included by Paradeep Port Trust in the export of the year under consideration as reported to the Assessing Officer. It is pertinent to note here that the unit of assessment is the assessment year and when the difference of 8,000 Metric Ton in the export of iron ore was specifically pointed out by the Assessing Officer for the year under consideration alleging the suppression of export sale by the assessee, the onus was on the assessee to reconcile the same satisfactorily by bringing the relevant facts and figures on record. As rightly contended by the Id. D.R., this vital aspect, however, was not appreciated by the Id. CIT(Appeals) in the right perspective and he deleted the addition made by the Assessing Officer on this issue by placing the onus wrongly on the Assessing Officer by observing that the Assessing Officer should have obtained the details of figures reported by Paradeep Port Trust and furnished the same to the assessee so as to enable the assessee to reconcile the difference. In our opinion, the said details ought to have been obtained by the assessee so as to support and substantiate its explanation that the export of iron ore to the extent of 8,000 Metric Ton actually pertaining to the immediately succeeding year was included by Paradeep Port Trust in the export figure of the year under consideration as reported to the Assessing Officer. Having regard to all these facts and circumstances of the case, we set aside the impugned order passed by the Id. CIT(Appeals) giving relief to the assessee on this issue and restore the matter to the file of the Assessing Officer for giving the assessee one more opportunity to support and substantiate its explanation regarding the difference of 8,000 Metric Ton in the export of iron ore by bringing on record the relevant details of export as reported by Paradeep Port Trust to the Assessing Officer. The

appeal of the Revenue is accordingly treated as allowed for statistical purposes.

15. In the result, the appeal of the Revenue is treated as allowed for statistical purposes, while the Cross Objection of the assessee is dismissed.

Order pronounced in the open Court on February 21, 2020.

**Sd/-
(Satbeer Singh Godara)
Judicial Member**

**Sd/-
(P.M. Jagtap)
Vice-President)**

Kolkata, the 21st day of February, 2020

- Copies to :*
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 - (3) *Commissioner of Income Tax (Appeals)-21, Kolkata;*
 - (4) *Commissioner of Income Tax, Kolkata- , Kolkata;*
 - (5) *The Departmental Representative*
 - (6) *Guard File*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.