

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'B' JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 231/JP/2017
निर्धारण वर्ष/Assessment Year :2010-11

M/s Shanta Sales Corporation 2-Kha-23, Jawahar Nagar, Jaipur	बनाम Vs.	The Income Tax Officer Ward-6(1), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AADFS2403C		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Sh. Manish Agarwal (FCA)
राजस्व की ओर से/ Revenue by : Smt. Runi Pal (JCIT)

सुनवाई की तारीख/ Date of Hearing : 12/12/2019
उदघोषणा की तारीख/ Date of Pronouncement: 11/03/2020

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A), Ajmer dated 04.01.2017 wherein the assessee has taken following grounds of appeal:-

"1. *On the facts and in the circumstances of the case, the Ld. CIT(A) has grossly erred in upholding the action of Ld. AO in rejecting the books of account of assessee by invoking the provisions of section 145(3) of the Income Tax Act, 1961 arbitrarily and without proper application of mind. Therefore, the action of the Ld. CIT(A) deserves to be held bad in law and the books of account of assessee deserve to be upheld.*

1.1 That, the Ld. AO has further erred in giving his opinions/observations on technical issues of the mode and manner of production process merely on the basis of assumptions and presumptions, without seeking an expert report on the same. It has been held by Supreme Court in the

case of Saraswati Industrial Syndicate Ltd. Vs. CIT reported in [1999] 237 ITR 1 (SC) wherein it has been held that the Assessing Officer is not entitled to make observations on technical matters, for which there is no material on record. Thus, the action of Ld. AO deserves to be held bad in law.

1.2 That, the Ld. CIT(A) has further erred in upholding the application of provisions of section 145(3) of the Act merely by alleging that the primary record of production was not maintained by assessee by completely ignoring the fact that daily production recorded maintained at mines was itself the primary record of production. Therefore, the action of Ld. AO in rejecting the books of account of assessee deserves to be held bad in law.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has grossly erred in sustaining the trading addition of Rs. 70,00,000/- out of the addition of Rs. 75,00,000/- made arbitrarily by Ld. AO being a lump sum / estimated addition without any basis. Thus, the addition of Rs. 70,00,000/- sustained by Ld. CIT(A) deserves to be deleted."

2. Briefly stated, the facts of the case are that the assessee owns 3 mines situated at Radhera and Sankhla Ki Basti in and around the vicinity of Bikaner and engaged in the business of mining of the clay. The assessee also owns 3 grinding units for converting clay lumps into clay powder and these units are situated at Guda. The assessee is also engaged in trading of clay. It purchases clay from the 3rd parties and supply to its prospective customers. It filed its return of income declaring total income at Rs. 1,80,105/ which was selected for scrutiny and assessment was completed u/s 143(3) of the Act, 1961 vide order dated 25.03.2013 wherein, *interalia*, addition of Rs.75,00,000/- was made by the Assessing officer which on appeal, has been reduced to Rs.70,00,000/- by

the Id CIT(A). Against the addition so sustained by Id. CIT(A), the assessee is now in appeal before us.

3. During the course of assessment proceedings, the Assessing Officer rejected the books of accounts maintained by the assessee by invoking of provisions of section 145(3) of the Act. As per the Assessing Officer, the books of accounts maintained by the assessee are not found to be reliable in view of the various discrepancies discussed in the assessment order regarding the production of clay at various mines, production of clay powder, trading of clay and clay powder as well as the expenses debited in the trading account. In this regard, a show cause was issued by the Assessing Officer dated 22.02.2013 and in response, the assessee filed its submission dated 08.03.2013 and which was taken on record and thereafter, the AO has recorded his finding. It would therefore, be relevant to refer to each of the discrepancies as noted by the Assessing Officer, the reply so filed by the AO and findings so recorded by the Assessing officer.

4. Firstly regarding trading of clay and clay powder, in the show cause notice, the Assessing Officer has stated that on test check basis of the traded goods, total purchases of Rs. 14,06,54,17/- are not linked with the sales as sales items are composite as traded goods as well as manufactured goods. Therefore, the verification with regard to the sale of traded goods as well as goods in stock cannot be ascertained and as such the sales items are not subject to verification. It was further stated by the AO in the show-cause notice that the assessee has shown purchase and sale to sister concern namely M/s Hemendra Minerals and Bhanwar Sales Corporation. The transactions with these concerns are required to be verified with the similar transactions of outside parties. Thereafter, in the final findings recorded by the AO at Para 10 of his order, the AO has listed down the purchases made for trading purpose

from various parties amounting to Rs 1,13,06,791/- and held that from the perusal of trading sales, it reveals that gross profit rate in trading of clay varies from 18.57% to 32.85%. It is also seen that the assessee has made purchases from its sister concern M/s Hemendra Minerals at higher rate as compared to other concerns hence the gross profit earned on such transaction is lower. Similarly, when sales are made to sister concern, the gross profit earned is lower. Hence it is not possible to verify the actual gross profit earned by the assessee on the trading of clay & clay powder. The said findings of the AO have been confirmed by the Id CIT(A), however, there is no reasoning which is discernable from the order of the Id CIT(A) on the basis of which he has confirmed the findings of the AO.

5. During the course of hearing, the Id AR submitted that as regards the trading activities with the persons specified u/s 40A(2)(b) is concerned, the same are at the prevailing market rates. The details of the same were furnished before learned Assessing officer during the course of hearings and it was submitted that in Shri Kolayatji, there were different areas of clay, where different quality of clay was found and purchases was made from the different parties as per requirement. The quantity purchased is directly resold after adding profit. The profit earned on trading of different types of clay will vary and is not the same. It is therefore submitted that no disallowance is warranted on this account more particularly when no specific instance has been pointed by Id.AO wherein assessee has made payment to related concerns at higher than market rate.

6. We find that merely because gross profit rate in trading of clay varies from 18.57% to 32.85%, trading results cannot be rejected without specifying the reasons or any corroborative material on record which dispute such trading results. Further purchases and sales from sister concern have been disputed

holding that the purchases are at higher rate and sales at lower rate. However, there is nothing on record in terms of third party comparable as to how such purchases and sales are at variance with any third party transactions undertaking similar transactions under identical conditions. The assessee has also submitted that different quality of clay were purchased and sold and therefore, trading margins will also vary and cannot be static in respect of every transaction. Therefore, the finding of the AO that the trading results cannot be accepted is not borne out of any specific finding so recorded by him and therefore, cannot be accepted.

7. Now coming to discrepancy in production of clay powder as stated by the AO, we find that there is no mention of the said discrepancy in the show cause notice issued by the Assessing Officer. Further, there is no finding which has been recorded by the Assessing Officer highlighting the specifics of any discrepancy so noticed by him. Therefore, merely stating that the books of accounts are not reliable as far as it relates to production of clay powder cannot be accepted in absence of any findings recorded in the assessment order.

8. Now coming to the discrepancies noticed in the expenses debited in the trading account. In the show cause notice, the Assessing Officer has talked about expenses on account of diesel and oil consumption as not fully verifiable, mining expenses which are higher than the preceding year and not subject to verification, and increase in the transportation and cartage expenses as compared to previous year. However in the final findings so recorded by the Assessing Officer, he has restricted his findings limited to discrepancies in consumption of diesel, and expenses pertaining to transportation and cartage. As per the Assessing Officer, on the basis of test check basis of the vouchers produced by the assessee, it is found that the expenses have been incurred on

number of vehicles which are not owned by the assessee. It was further observed that the expenses pertaining to sister concern M/s Hemendra Minerals were also debited in the accounts of the assessee. Further, the assessee has lifted 100 litres of diesel however, the assessee did not maintain day to day consumption of the diesel so lifted. Regarding transportation and cartages expenses, it was noticed by the Assessing Officer that as against claim of Rs. 6,87,269/- in the preceding year, the assessee has claimed transportation expenses of Rs. 30,85,671/- and therefore, the assessee was asked to produce complete bills and vouchers as well as to link transportation and cartages expenses with sales bills. In response, the assessee filed details and records which were put to test check by the AO. The assessee has also explained that due to increase in production increase in fares, the expenses have increased during the year. It was however held by the AO that the assessee could not link the entire transportation and cartages expenses with the sales bills and the expenses have increased 5 times whereas increase in production of clay is only 0.64% as compared to preceding year. Further, the assessee's contention that number of trips of the dumper has increased due to removing of some quantity of over burden was also not found acceptable as the assessee has never produced data regarding quantity of over burden removal.

9. During the course of hearing, the Id AR submitted that the reason for increase in expenses in comparison to the previous year is due to revision of rates of daily wages paid to the manual labours, rate increased for the payment made to outside labour for removal of overburden, transportation charges, machine working of outside parties and dumpers working for removal of overburden with machine. Further, production has also increased from the last year and so is the overburden removal increased, hence the expenses related to the production and removal of overburden are on the higher side.

10. We find that as far as expenses pertaining to sister concern is concerned, the same clearly cannot be allowed in the hands of the assessee company, however, at the same time, given that there are transactions of purchase from the same sister concern, it needs to be determined whether the transportation expenses are part of assessee's obligation or not. Further, the Assessing officer is right in examining the transportation expenses with the sales generated by the assessee especially where there is increase in expenditure as compared to last year but given the volume and scale of operations, appropriate audit methodology needs to be employed and sample size to be identified to verify these expenses rather than expecting the assessee to produce documentation linking the entire transportation and cartages expenses with the sales bills may be practically not feasible. At the same time, on perusal of records, we also find that there are also gaps and reluctance on part of the assessee in coming forward with appropriate explanation and filing documentation in support thereof. In overall view of the matter, we find that discrepancy so highlighted by the AO in respect of these two expense heads in terms of non-verifiability need to be read along with other discrepancies to arrive at the final conclusion regarding non-reliability of books of accounts which we shall be discussing in the subsequent paragraphs.

11. Now coming to the main issue of suppression of production by the assessee and apparently the main reason for rejection of books of accounts as discernable from the assessment order.

12. In the show cause notice, the Assessing Officer has stated that the production shown by the assessee is to be verified vis-a-vis the facts revealed from the examination of the records produced and examination of the mining mate (the person employed at the site) and other factors. It was found that the firm is running mines at 3 places. In the process of mining, firstly the

overburden is removed to reach the clay bed and for the purposes, the excavator & the dumper/tipper are mainly hired and labour is hired on daily wages. The expenses of excavator & dumper/tipper are booked under the head "mining expenses" and expense of tractor & trolley is booked under the head "Cartage expenses". The detail of labour on contract is maintained in wages register of overburden removal. However, the assessee does not maintain his own record of the work done by the hired machines i.e excavator & dumpers. Further, no details are maintained by the assessee of the work done by the excavator & dumpers owned by the assessee. Thus, the extent & purpose of utilization of the excavators & dumpers is not reflected. Similarly, quantity of work done by the regular paid workers is also not reflected in any books. Thereafter, he referred to the period for which the excavators & dumpers have been hired from external agencies during the year. Further, he referred to the calculation of density of the clay by using the data shown in its sorting payment register. Thereafter, the Assessing Officer referred to the statement of the mining mate and basis his understanding of facts and figures, he determined that in respect of mine no. 8/96, 1.243 feet of clay is dug out in a day with the help of excavator & labour. Similarly with labour only, the clay dugout & dispatched is 0.355 feet per day. Thereafter, basis the dimension of the clay bed and working days, the Assessing Officer has worked out the production for the year amounting to 168,756/- tones in respect of mine No. 8/96 as against 143,099 tons of production shown by the assessee. Basis the same, he arrived at the finding that the assessee has suppressed production to the tune of 25,657 tons which comes to 17.92% of the production declared. Applying the same proportion in respect of other two mines, the AO worked out the suppression of production in respect of other two mines No. 2/95 and 7/96. Further, the Assessing Officer assumed that the production of SGRS grade clay & C grade clay is in 4.1 ratio and basis the sale value is recorded in the books of accounts, has worked out the suppressed production of Rs. 63,13,099/-

during the year and the assessee was accordingly issued a show cause notice. In response, the assessee filed its submission which was considered however, not found acceptable and the relevant findings of the AO are contained at paras 7 to 9 of the assessment order wherein effectively, he reiterates his initial findings as per show-cause notice and rebut the submissions of the assessee and finally held as under:

"9. In view of the detailed discussion and factual verification supported with the norms of the industry as well as after allowing leverage for all contingencies and further keeping in mind the volume of men and machinery employed by the assessee on the available mine at the time of relevant year i.e, F.Y 2009-10, I have come to the conclusion that the assessee's A/R's submission is without any valid basis and not supported with the primary records as such is not tenable and it is established that the assessee has suppressed production at least to the tune of 29,925.30 MT of clay which is valued at Rs 66,43,417/-."

Against the said findings of the AO, the assessee carried the matter in appeal before the Id. CIT(A) who has since confirmed the said findings and now the assessee is in appeal against the said findings.

13. During the course of hearing, the Id. AR submitted that books of accounts of assessee were subject to audit by qualified chartered accountant and who had not pointed out any defect in the books so examined. The appellant had produced such audited books of accounts alongwith the supporting vouchers before Id.AO during the course of assessment proceedings, which were examined on test check basis by the learned assessing officer and no discrepancy whatsoever was observed. However, Id.AO has invoked the provisions of section 145(3) and has rejected the books of accounts alleging that assessee could not produce the primary records like the dispatch receipt to truck drivers for taking clay from base to storage area,

counter foil of ravana receipts for dispatch from storage place to customer and vehicle wise diesel consumption and details of usage of own excavators and dumpers. In this regard, it is submitted that Id.AO has misunderstood the dispatch receipts issued to truck drivers for taking clay to the storage area as primary records, whereas the same is in the nature "Memorandum record" and the production register, in which entries of production are made on day to day basis constitutes the basic and primary records. Similarly, ravana receipts issued to trucks carrying produce from storage place to customer are issued by the mining department for the purpose of determination of royalty and cross checking as to whether royalty paid by assessee is correct or not. Also, so far as vehicles owned by assessee are used for the purpose of business (more particularly when nature of vehicles is such which cannot be used for personal purposes). It is not practically possible to maintain record as to which particular excavator removed how much over burden and worked for so much hour in a day and similarly which particularly dumper carried this much over burden by working for so much hours in one particular day. It is precisely because of this reason that even mining department has not put any statutory obligation on mines to keep such record. Thus, it is evident that there is no requirement for maintaining vehicle wise consumption and details of usage of excavators and dumpers by any law enforcing agency. As regards Income Tax is concerned, it is submitted that section 44AA of the Income Tax Act does not specify any specific type of books of accounts required to be maintained by businessmen and rather simply says that assessee should maintain such books of accounts as would enable the AO to compute the total income of assessee in accordance with provisions of Income Tax Act. Thus, Income Tax Act also does not impose any legal obligation to maintain such and such type of primary record for production.

14. It was further submitted that the appellant could not making any sales from the mines without issuing the ravana, and the bills were made for all the

ravana issued by the appellant, which were verified while doing the royalty assessment by the mining department. No difference was pointed out by the Mining Officer in the production declared by the appellant and sales made in the assessment made. In support of such contention, Copy of royalty assessment Order, copy of monthly return for the fraction period, details of production at mines and dispatches from the mines with reconciliation with the production and dispatches as per monthly returns shown by the appellant and assessed by the mining office were furnished before lower authorities, however the same were brushed aside without pointing out any single discrepancy therein. Moreover, Id. AO has also not found any sales without issuing sale bills.

15. It was submitted that in the instant case, production register itself is Primary record, wherein no discrepancies have been pointed out by the Royalty Department or by the AO, thus the allegations made by Id. AO are not sustainable. So far as the case of assessee is concerned, production records as furnished before mining department were accepted without any adverse findings and in fact, copy of royalty assessment order was filed before the Id. AO alongwith monthly return of the production at mines and dispatches made during the month so filed before mining department. It may be appreciated that royalty assessment is made by the mining department after verifying all the records maintained i.e. production register, ravana register and sales bills etc. There is no difference in the day to day production shown by the appellant and worked out by mining department officials and that recorded in the production register maintained at the mines. There is no difference in production and dispatches made by the appellant as shown in the royalty assessment made by the mining department. Ld. CIT(A) observed that such assessment by mining department were based on the examination of same books, which is incorrect. In fact, as stated above, ravana were issued by the

department itself, they have the records of all the ravana issued, which are reconciled with the Ravana given with lorry. At check post barrier, vehicle is weighed and after cross checking and matching the mined item as well as its weight, the Royalty is charged. Thus, the assessment done by mining department is a reconciliation of their record with assessee record. Moreover, verification of the production done at mine is the jurisdiction of Mining department whose assessment should be given credence and should be accepted by other departments when they do not have any evidence of suppressed production.

16. It was submitted that books of accounts and other records maintained by assessee are accepted as correct by mining department, where officials have more technical knowledge and are more equipped for computing/verifying production shown from mines. It was thus submitted that production from mines as accepted by mining department cannot be challenged in Income tax proceedings by Ld. A.O., unless some contrary positive evidence or material is brought on record.

17. It was further submitted that Id. AO has estimated the quantum of production by applying certain formulas in a clumsy and round about manner which were not at all required and moreover the basic figure for the same has been taken purely on estimated basis on the very generalized statement of one Shri Raghvendra, the mining mate, whose main responsibility is safety of mine. The Id.CIT (A) has just confirmed the same by merely stating that Id.AO has derived the suppressed production in logical manner, without appreciating that AO has merely done round about and rather reverse working and even for this working Id. AO has taken estimated generalized figure instead of a specific and day-to-day production figure which are maintained by assessee.

18. Without prejudice to above, it was further submitted that estimation of production by considering overburden removal, length and width of the space available for mining depth / height of instant mine, volume and density of clay etc. is purely a technical matter. It would be appreciated that AO is not entitled to make his own estimation upon technical issues as has been held by Hon'ble Supreme Court in the case of Saraswati Industrial Syndicate Ltd. Ltd. reported in 237/ITR 1/ 103 Taxman 395 (SC). Thus, if at all, Id.AO had any reservations in accepting the production declared by assessee, proper course of action was to seek the opinion of Mining department officials and only if the same is found against the assessee, AO could have made addition after giving opportunity. It is a trite law that action of rejecting books and trading results declared by assessee cannot be made so light heartedly and Id. AO has to have strong evidences against the assessee before making such a huge addition. Reliance was placed on the decision in case of CIT Vs. Anandha Metal Corporation (2005) 273 ITR 263 (Mad), and Commissioner of Income Tax Vs. Shri Girija Smelters (P) Ltd. 230 Taxman 28 (AP). It was thus submitted that the observations of Id. AO and Id. CIT(A) regarding assessment done by Mining department are contrary to facts and thus deserves to be ignored and excluded.

19. It was further submitted that the AO for invoking provisions of section 145 (3) has derived support from the judgment of Hon'ble Rajasthan High Court in the case of Commissioner of Income-tax v/s Narendra Mohan Paliwal 271 ITR 347 (Raj). In that case, the assessee was making underweight invoices and this fact was evident from the documents found during the course of search. The assessee in that case had not produced any books of accounts during the course of assessment proceedings. Thus the facts of the case were entirely different from the case of appellant where, all the dispatches from the mines are made by issuing the ravana in

serial number(s) (booklets issued by the mining department) and entry is made in the ravana register maintained at mines. The ravana is checked by the mining department representative near to the weigh bridge and if any truck is found without ravana or any weight difference is found out, the same is seized and is released only after paying royalty equal to the sale amount and a hefty penalty which ranges between Rs. 1,000 to Rs. 1,00,000/. In ravana register, the actual weight is written from the weight slip and bills are prepared as per actual weight.

20. The Id AR further explained the mining process and submitted that the mining of clay is done in open cast mines and the first step is to determine the mining site through digging of a test pit and once the mining site is determined, the first process is the removal of overburden, which extends upto 40-60 feet depth. Thereafter, the clay bed is reached which extends upto 25-30 feet. Once, the clay from the first layer is removed, the process of refilling of the pit is started. Overburden is removed with the help of excavators as well through manual labour wherever machines cannot reach.

21. It was further submitted that in order to understand the mining process in detail, during the course of assessment proceedings Id.AO recorded statements of two persons, one Sh. Raghavendra [mining mate of Guda Radhera I mines and another Sh. Rupa Ram (Labour)]. Both these persons were not responsible for quantity of mined clay on day-to-day basis or even otherwise also. In the statements so recorded, various questions were asked about the procedure and mining process, mainly overburden removal, digging of mine etc. Apart from it Shi Raghvendra was asked about quantum of production with machines and without machines, which was not exactly in his domain. Same is evident from the perusal of the statement of Shri Raghvendra. It is seen that at Q. No. 4 he was asked about who are working on mine where he is working and what are their works. He has replied that his work is related

to safety of mine and to tell the labour for work for digging (as to where and to what depth labour should dig considering the overall safety of mines). Shri Mittal was Mining engineer and overall incharge. He also stated that details related to production are looked after by Shri Murlidharji. For the sake of ready reference his statement is reproduced:

Q. No. 4 मैं0 शान्ता सेल्स कॉर्पोरेशन में जिस माईन्स पर आप काम करते है उस माईन्स पर आप काम करते है, उस माईन्स पर और कौन कौन व्यक्ति काम करते है तथा क्या काम करते है ?

Ans. 1. माईन्स पर श्री मित्तल, माईनिंग इंजिनियर है।
2. श्री बक्सीदान – फोरमैन के पद पर है
3. श्री राघवेन्द्र सिंह – माईनिंग मैन
4. श्री मुरलीधर – मुनिम – पारियेपर

वर्तमान में 8 लेबर है जिनका मुझे नाम याद नहीं है। मेरा काम खान की सुरक्षा देखना और लेबर को काम बताना है कि कहा पर खुदाई करनी है। मुनिम मुरलीधर जो भराई के बाद हिसाब किताब देखता है। 8 लेबर खुदाई का काम करते है और भराई का काम मशीन के द्वारा होता है।

22. Thus, it is evident that statements of these persons cannot be relied upon in relation to quantum of production, as this is not their domain. On the basis of statements of these two persons, wherein they were referring to production activity in general, that too related to the period of February, 2013 or so when their statement was recorded. It is obvious that they could not have remembered the specific production details of three years back. Ld. AO developed his own theory based on the assumptions and presumptions to work out the quantum of excavation during the year on the basis of generalized statement and further applied certain generalized formulas of Density, which had no bearing on the actual production. Ld.AO arrived at some presumption that assessee had suppressed production by Rs.66,43,417/-. Also, Id.AO alleged some variation in consumption of electricity and trading activities with

persons specified u/s 40A(2)(b) and accordingly made lump sum addition of Rs.75 lacs, which has been reduced to Rs. 70 lacs by Id.CIT(A).

23. In this regard, it was submitted that Id.AO has worked out quantum of excavation by misapplying the statements of Sh. Raghavendra and Sh. Rupa Ram, therefore it would not be out of place to mention here the relevant extracts of statements of the two persons recorded. Statements of Sh. Raghavendra (Mining Mate):

प्र.5 आप जिस माईन्स पर काम करते हैं उस माईन्स के Function की पूरी जानकारी दे व माईन्स की साईज क्या है और Working अभी लेबल / स्तर पर चल रही है और मार्च, 2010 से किस स्तर पर चल रही थी ?

उत्तर माईन्स में हम माईनिंग इंजिनियरिंग के निर्देश पर Overburden हटाते हैं तथा Overburden हटाने के बाद (क्लें) Clay तो आता है तो Production करते हैं। Overburden तथा Production steps में किया जाता है। Ist step 50 pt. चौड़ी होती तथा Average Height हर स्टेप में 20 Ft. होती है। इस तरह से Overburden हटाते हुए Clay bed तक पहुंचते हैं तब तक 3 Steps बन जाते हैं। Overburden कहीं कहीं 40 Ft. होता है तो कहीं 60 Ft. होता है। अनुमोदन 60 Ft. पर होता है। जहां Overburden कम होता है वहां Clay bed भी कम होता है। 60 Ft. Overburden जहां होता है वहां अनुमोदन 30 Ft. का Clay bed होता है। Mine 360 Ft. चौड़ी है।

Overburden हटाने के लिए Excavator L&T कम्पनी का इस्तेमाल होता है तथा 3 Tipper / dumper इस्तेमाल होते हैं।

Excavator L&T Overburden को खोदा जाता है तथा अपने Arm / bucket से Tipper में डाला जाता है। हर 5 से 10 मिनट में एक Tipper भर जाता है। एक Tipper में करीब 12 टन Overburden आता है। हर Tipper की बिल्टी Issue होती है। Excavator Machine का मुनिम Issue करता है जिसकी Copy Overburden Unload करने के बाद हमारी Company के मुनीम को दे देते हैं।

Excavator माईन के Working Hours के दौरान काम करता है। माईन के Working Hours सुबह 9.00 बजे से शाम 5.00 बजे तक होते हैं। जिसमें एक घण्टे का Lunch होता है।

Excavator कम्पनी के खुद के भी हैं तथा किराये पर भी लिए जाते हैं। इसी प्रकार डम्पर / Tipper भी कम्पनी के खुद के हैं तथा किराये पर भी लिए जाते हैं। जब किसी की Excavator मशीन व dumper एक साथ लगते हैं तो Excavator ने कितना

काम किया, कितने घन्टे काम किया, यह नहीं गिना जाता Tipper की Number of Trips गिने जाते हैं। Per Trip Tipper का रूपये 150/- चार्ज होता है। एक दिन में एक Excavator मशीन करीबन 60 से 70 Tipper भर देती है, इसका मतलब है कि हर दिन में करीबन 720 से 840 टन Overburden Remove हो जाता है। एक Step को खोदने में या बनाने में 360 Ft. चौड़ाई, 50 Ft. लम्बाई व 20 Ft. की उचाई का Overburden Remove होता है। यह निकालने में करीब 15 दिन का समय लगता है। इस तरह से 3 Steps यानी 60 Ft. की गहराई पर Clay bed आता है जो कि अनोमन 30 Ft. की गहराई तक होता है।

अभी माईन्स का Extension या बढ़ोतरी L Shape हो रही है। माईन्स के कोने में मशीन यानि कि Excavator को घुमने की जगह नहीं मिलती वहा मैन्यूअल Labour का इस्तेमाल करके ट्रैक्टर में Overburden डालकर Remove होता है। एक ट्रैक्टर में करीबन 3 टन Overburden आता है।

इसी तरह Production के लिए भी एक Excavator मशीन व करीबन 3 Tipper काम में आते हैं। Production में भी Overburden Removal की तरह ही कार्ड होता है। यहां पर भी कोनों में मैन्यूअल Labour काम करती है। मैन्यूअल Labour Sieving sorting का भी कार्य करती हैं Production में करीब 8 से 10 लेबर कार्य करती है, ज्यादा समय लेबर खुदाई का काम करती है। माल इकठ्ठा होने पर जरूरत के अनुसार Sorting करती है। Sorting में 2 ग्रेड की Sorting है, White या ग्रे कलर की मिट्टी को SGRS Gr. कहते हैं तथा बाकी रंग की मिट्टी ओ— बारीक चूरा मिट्टी c ग्रेड कहलाती है। SGRS Grade में Lumps होते हैं। SGR Grade का चूरा भी c ग्रेड में शामिल हो जाता है। Sorting के लिए Regular Labour का इस्तेमाल नहीं होता है। यह कार्य ठेके की Labour करती है। इस लेबर को कोई Instruction देने का काम व उनका कार्य उनका Supervision करने का कार्य मुरलीधर मुनीम जी करते हैं।

मैं Production में Excavator मशीन तथा मैन्यूअल लेबर का supervision का कार्य करता हूँ। Excavator मशीन से हर दिन करीबन 700 टन माल निकलता है। मैन्यूअली 200 टन निकलता है। ऊपर भी मैंने 700 टन बताया है उसमें लेबर द्वारा खोदा गया माल भी शामिल है। कभी कभी Excavator नहीं चलती है, केवल लेबर काम करती है। तब 200 टन का Production होता है। ज्यादातर समय Excavator मशीन राधेरा, गुढ़ा में रहती है, महिने में एक या दो दिन के लिए ही मशीन दुसरी Mine पर ही जाती है। 3 मशीन Excavator मशीन में से करीब करीब 2 इसी Mine पर रहती है। 3 Excavator मशीन इस राधेरा गुढ़ा पर चलती रहती है। 2 मशीन खुद की है तथा एक किराये वाली मशीन व उसके साथ 2-3 Tipper रहते हैं। कम्पनी की खुद की मशीन में से एक Excavator Overburden Remove में रहता है तथा एक Production में रहता है। किराया का Excavator हमेशा Overburden Removal में रहता है।

24. From perusal of above, it is evident that what was asked from mining mate Sh. Raghavendra Singh was regarding functioning of mine and at which level, mines were operating and further at which level the same was operating since March 2010. In response to such question, he explained production process at length, however throughout his statements he has mentioned the details "in present", i.e. at the time of recording of statements on 18.02.2013 and at no point of time he stated that production "was being" carried out a particular level in past since 2010. In fact, in his subsequent questions, i.e. in Q. 6, he has mentioned that he has even stated that he was not involved in the work of Overburden removal and had answered Question No. 5 on estimate basis. However, Id.AO has misconstrued the same as level of operation of FY 2009-10, and thus has made such data as basis of all his subsequent calculations. Further, learned Assessing officer has considered that 8 M.T. productions is done by the manual labour per day per labour by placing heavy reliance on the part statement of Shri Rupa Ram labour recorded on 18.02.2013. After relating the statements of above two persons, Id.AO observed that as Sh. Raghavendra stated that 200 M.T. clay was produced by the manual labour per day and Sh. Roopa Ram mentioned that per day manual production per labour is 8 M.T. Accordingly, 25 labour are required continuously to produce the 200 M.T. clay @ 8 M.T. per day per labour, which was not at all the actual position in the assessment year 2010-11. In period relevant to A.Y. 2010-11 on an average 20 labours were appointed in all and that too not continuously as per actual attendance of labours for excavation of clay by adopting 23 working days (as considered by the learned assessing officer).

25. It was submitted that even for the argument sake, if it is presumed that each labour gives 8 MT production per day uniformly (but not admitting) the tentative production would be worked out as below:

Month	Number of labours	Working days	Total attendance of male labour for Production in 23 days	Production done @ 8 M.T.
April,09	26	23	559	4,472
May,09	19	23	388	3,104
June,09	20	23	396	3,158
July,09	21.5	23	422	3,376
Aug.,09	21.5	23	415	3,320
Sept.,09	20	23	420	3,360
Oct.,09	21	23	427	3,416
Nov.,09	21	23	327	2,616
Dec.,09	22	23	285	2,280
Jan.,10	19.5	23	279	2,232
Feb.,10	20	23	262	2,096
Mar.,10	15.5	23	230	1,840
			Total	35,280

Whereas the learned assessing officer had taken the clay production by manual labour for 23 days of working @ 200 M.T. per day for the year. This much of the production can only be possible with more than 33 labours working each day considering on an average 6 MT production by each labour per day. Even as per AO's assumption of average production of 8 MT per labour, at least 25 labours each day would be required. However, from perusal of details of attendance register of labour working for production, which gives the actual position of labour employed on day-to-day basis, it is seen that in the month of March, 2010, it was as low as 15.5 and in most of the months it was 20-21 labours. Hence, presumption of AO completely contrary to the facts on record. Hence, the manual labour production so presumed by the learned assessing officer at 55,200 M.T. deserves to be ignored being not based on correct facts.

It is submitted that even as per AO's presumption number of labour working in the mines and as per his attendance the production would work out at 35,280 M.T. only. As such the learned assessing officer had taken 19,920 M.T. more production in his calculation. As per calculation, the appellant did not have external excavator for 17.5 days out of the total working days of 276 days. The production effected by it is $17.5 \times 500 = 8,750$ M.T. The total effect of the above working is $19,920 + 8,750 = 28,670$ M.T. less production by the appellant from his calculation of production.- to be modified suitably as AO has already given benefit of 17.5 days. As per learned assessing officer calculation the total production at Radhera I mines comes to 1,40,086 M.T. (168756 - 28670). The appellant had shown the total production of 1,43,099 M.T. There is no suppression of production by the appellant as calculated by the learned assessing officer. On the similar basis, there is no suppressed production in other mines.

26. It was further submitted that calculation of suppressed production is the statement of Shri Raghavendra Singh Mining Mate which were recorded on 18.02.2013 who stated prevailing general working position at the mines. Other than that no evidence for the suppressed production and sale of the same by the appellant was given by the assessing officer. At this juncture, it is submitted that Id. AO in remand report, has commented that *"As per standards, the density of the clay is found to be 2400/kg/m³ to 2600/kg/m³, whereas the AO has taken the density at just 1122/kg/m³, thus if the density is taken as per the standards of engineering, the suppressed production would have been much more."* In this regard also, it is mentioned that Id. AO has given a generalized observations. Had there been actually increase in production considering density as per standards (as mentioned), Id.AO would have been definitely re computed the same, which has not been done by AO. In fact, in reply to remand report, assessee has furnished calculation of

production by adopting density of clay as stated by Id.AO, which has not resulted in any change in production. All these facts lead to the conclusion that formulas adopted by Id.AO in re computation of production are generalized and not based on the technicalities involved. In fact, in the assessment of A.Y. 2012-13, Id.AO applied the same formula as adopted in A.Y. 2010-11 and recomputed the production shown by assessee, however eventually arrived at a conclusion that *"The assessee had shown production of 295072.800 MT of clay from all the three mines where as the production calculated as per the formulae applied in previous year the production comes to 196891MT, thus the production shown by assessee during the year under consideration is more than the production estimated hence the mining results of the assessee are accepted."* It is thus submitted that the formula applied has no direct bearing on the computation made and further confirm the contention of assessee that presumption of Id.AO that the figures of production stated by mining mate Raghavendra and labour Roopa Singh are pertaining to A.Y. 2010-11 is contrary to the facts.

27. It was further submitted that once the turnover declared by assessee is accepted, there is no reason to reject the quantum of production. It is thus clear that there is no suppressed production of clay at mines. More particularly when, the day to day production is noted in the production register maintained at the mines and dispatches made from the mines were entered in ravana register and actual weight is written from the weight slips and bills were prepared for it. There is no mistake pointed out by the learned assessing officer in the sales bills issued during the year. Then there was no reason to calculate the undisclosed income of the appellant and make addition of Rs. 66,43,417/- without mentioning any discrepancy in the sale bills.

28. With respect to allegation of Id.AO regarding variation in electricity consumption in factories pointed out by Ld. A.O, it was submitted that there is no variation in the consumption of electricity at factories. In the assessment order, the Ld. A.O. erroneously calculated consumption by dividing units of electricity by production in MT, whereas production after converting in Kg. is to be divided by the unit of electricity consumed. The chart showing the production of clay powder of factories as per unit consumption of electricity is as under:

Month	Units of Electricity Consumed	Production of clay powder in M.T.	Working Days	Production Per unit consumption of Elec. in Kg	Production Per day In M.T.	Production Per unit in M.T.
April,09	17820	925	25	51.90	37.00	18.50
May,09	16365	658	25	40.21	26.32	13.16
June,09	14520	706	26	48.62	27.15	13.58
July,09	12420	775	27	62.40	28.70	14.35
Aug.,09	16005	1099	24	68.66	45.79	22.90
Sept.,09	21405	1049	25	49.01	41.96	20.98
Oct.,09	18855	960	25	50.91	38.40	19.20
Nov.,09	19202	968	23	50.41	42.08	14.03
Dec.,09	21746	825	27	37.94	30.55	10.18
Jan.,10	21472	750	24	34.93	31.25	10.42
Feb.,10	15641	790	24	50.51	32.91	10.97
Mar.,10	18290	1080	25	59.05	43.20	14.40

In the month of August, normal mesh powder is grinded 1036 M.T. and high Mesh is 63 M.T., hence per unit production is increased. In the month of January, 2010 normal mesh powder grinded 622 M.T. and high mesh powder grinded 128 M.T. and due to moisture in the material per unit production decreased. In all the other months the consumption of unit are normally ranging within 40 to 60 Kg. as informed to the learned assessing officer during the course of assessment proceedings.

29. It was further submitted that the assessee has declared GP rate of 13.02% during the year under consideration, which was 13.69% in immediately preceding year despite of around 20% increase in turnover. In other words, there is just marginal decrease in GP rate. Also, if trading addition of Rs. 70,00,000/- as confirmed by CIT(A) is added back to the GP, it would result in GP rate as high as 23.37%, which is exorbitantly high to achieve practically. It is thus submitted that trading addition of Rs.70 lacs is completely imaginary and deserves to be deleted. In support, reliance was placed on the decision in case of Income Tax Officer Vs. Chohtan Construction Co. 84 TTJ 693 (Jodh) and Sardar Kehar Singh Vs. Commissioner of Income Tax and Others 195 ITR 769 (Raj). In view of above, it was submitted that trading addition confirmed by Id. CIT(A) at Rs.70 lacs deserves to be deleted.

30. The Id DR is heard who has submitted that the AO has discussed in detail in the assessment order the discrepancies /defects in the books of account of the assessee and had come to a conclusion that production of clay at mines and also the production of clay powder, quantity of clay and clay powder traded by the assessee recorded in the books of accounts are not reliable. Further, the expenses debited in the trading account were also found not verifiable by the AO. Hence, the books of accounts of the assessee were rightly rejected by the AO under section 145(3) of the I.T. Act, 1961 and confirmed by the Id CIT(A). It was further submitted that after rejection of books of accounts, the AO has made addition of Rs.75,00,000/- to profit declared by the assessee on account of suppressed production of Rs.66,43,417/- and other discrepancies noticed by him. On the other hand, the assessee has no doubt furnished a detailed working of the production to show that there was not suppression of production and has also filed copies of the अधिशुल्क निर्धारण प्रपत्र in respect of all the three mines alongwith the reconciliation statement reconciling the quantity of production shown in the अधिशुल्क निर्धारण प्रपत्र

with the quantity of production shown in the books of appellant. It was however submitted that the appellant could not controvert the finding of the AO that the appellant had failed to produce primary records of the production. The quantity of the production shown in the अधिशुल्क निर्धारण प्रपत्र is also based only on the books of accounts of the appellant. The authority issuing अधिशुल्क निर्धारण प्रपत्र has not made any independent inquiry to find out the actual production of the appellant nor the authority keeps its own independent record for the production made in the mines of the appellant. It was accordingly held by the Id CIT(A) and rightly so that the AO is not bound to accept the quantity of the production shown in the अधिशुल्क निर्धारण प्रपत्र as correct when he had pointed out various discrepancies and defects in the books of accounts of the appellant. The AO has worked out the quantity of suppressed production in very scientific and logical manner, keeping in view the entire working environment of the mines of the appellant. In view of the facts discussed by the AO in the assessment order, the action of the AO rejecting the book results by invoking the provisions of section 145(3) of the I.T. Act, 1961 is to be upheld. It was further submitted that inspite of discrepancies so noticed by the AO and also by Id CIT(A), the latter is more than reasonable as he has restricted the addition of Rs. 75,00,000/- made by the AO to Rs. 70,00,000/- and no further relief may be granted to the assessee. He accordingly relied on the findings of the lower authorities.

31. We have heard the rival submissions and perused the material available on record and carefully examined the factual matrix of the matter.

32. In respect of one of the mines owned by the assessee, we find that the Assessing officer has estimated the quantum of suppressed production by considering the removal of overburden from such mine by the excavators and dumpers hired from the external agencies as well as those owned by the

assessee. Thereafter, he referred to the period for which the excavators & dumpers were hired from external agencies and used during the year. Further, he referred to the calculation of density of the clay by using the data shown in its sorting payment register. Thereafter, the Assessing Officer referred to the statement, of Shri Raghvendra, one of the mining mate employed at the site, recorded during the course of assessment proceedings and basis his understanding of facts and figures, he determined the length and width of clay beds available for mining, volume and density of clay and has worked out that 1.243 feet of clay is dug out in a day with the help of excavator & labour and where only manual labour is employed, he determined that labour is able to dig out 0.355 feet of clay per day. Thereafter, basis the dimension of the clay bed so determined by him and estimated working days available with the assessee to carry out mining operations, the Assessing Officer has worked out the production amounting to 168,756/- tones of clay in respect of mine No. 8/96 as against 143,099 tons of clay production as shown by the assessee. Basis the same, he arrived at the finding that the assessee has suppressed production to the tune of 25,657 tons which comes to 17.92% of the production declared. Applying the same proportion in respect of other two mines, the AO worked out the suppressed production in respect of other two mines No. 2/95 and 7/96. Further, the Assessing Officer assumed that the production of SGRS grade clay & C grade clay is in 4.1 ratio and basis the sale value is recorded in the books of accounts, has worked out the suppressed production of Rs. 63,13,099/- during the year. Further, the AO has alleged that the assessee has not produced the primary records like the dispatch receipts to truck drivers for taking the clay so dug out from the mining area to storage area and from there, for dispatch to the customers.

33. Per contra, the contention of the Id AR on behalf of the assessee is that the production register in which entries of production are made on daily basis is

the basic and primary record. It was further submitted that its mining operation comes under the jurisdiction of State Mining Department wherein both extraction/production and dispatches are closely monitored by the Mining Department at the check post before the clay is finally dispatched to the customers and ravana receipts are issued to trucks by the mining department for the purpose of determination of royalty. It was further submitted that the assessee could not making any sales from the mines without the ravana receipts, and the bills were made for all the ravanas issued and no difference was pointed out by the Mining Department in the production and sales declared by the assessee. In support of such contention, copy of royalty assessment orders, copy of monthly returns, details of production at mines and dispatches from the mines with reconciliation with the production and dispatches as per monthly returns declared by the assessee and assessed by the Mining Department were furnished before lower authorities, however the same were not considered nor any discrepancy was pointed out. It was further submitted that royalty assessment was made by the Mining Department after verifying all the records maintained i.e. production register, ravana register and sales bills etc. There is no difference in the day to day production shown by the assessee and worked out by mining department officials and that recorded in the production register maintained at the mines. There is also no difference in production and dispatches made by the appellant as shown in the royalty assessment made by the mining department. Regarding observations of the Id. CIT(A) that such royalty assessment by Mining Department were based on the examination of same books, it was submitted that the same is not correct as ravanas were issued by the department itself, they have the records of all the ravana issued, which are reconciled with the Ravana given to the truck drivers. At check post barrier, vehicle is weighed and after cross checking and matching the mined item as well as its weight, the truck is allowed to leave and royalty is charged accordingly. Thus, the assessment done by mining department is a

reconciliation of their record with assessee's record. It was further submitted that verification of the production done at mines comes under the jurisdiction of Mining Department where officials have more technical knowledge and are more equipped for computing/verifying production shown from mines and whose assessment should be given credence and should be accepted by Income Tax Department unless some contrary positive evidence or material is brought on record which demonstrate suppressed production and ultimate sale thereof. It was further submitted that Id. AO has estimated the quantum of production by applying certain formulas in a clumsy and round about manner which were not at all required and moreover the basic figure for the same has been taken purely on estimated basis on the very generalized statement of one Shri Raghvendra, the mining mate, whose main responsibility was of safety of mine. The Id.CIT (A) has just confirmed the same by merely stating that Id.AO has derived the suppressed production in logical manner, without appreciating that AO has merely done in a roundabout manner and rather reverse working and even for this working, Id. AO has taken estimated generalized figure instead of a specific and day-to-day production figures which are maintained by assessee and duly submitted during the course of assessment proceedings.

34. We agree with the contention so advanced by the Id. AR that as far as the determination of quantum of clay which can be extracted/produced from mines is concerned, it is clearly a complex and technical matter involving understanding of the topography of the area where mines are located, the methodology and process of extraction/production involved, the machinery and labour employed as well as various environmental and related regulatory matters. Therefore, where the Assessing officer had some apprehension in terms of non declaration of the requisite production/extraction, as we can see from reading of initial part of the assessment order, in our view, he is well within his jurisdiction to carry out further examination and can also record the

statement of employees of the assessee working at the mining sites but at the same time, before arriving at the final conclusion, he should have referred the matter to the State Mining Department and sought the opinion and assistance of the domain experts in the field of mining who have the requisite qualification and experience in the matter. We find that similar matter had come up for consideration before the **Hon'ble Andhra Pradesh High Court** in case of **CIT vs. Shri Girija Smelters (P) Ltd., (Supra)** wherein the relevant findings read as under:

"14. All said and done, the occasion to levy income tax would arise, only when the product in question was found or alleged to have been sold, and the sale proceeds, constituting income were not reflected in the returns. It was not even alleged that the product shown in the form of discrepancies, was sold at all.

15. We are sure that when faced with a situation of that nature, even a Superintendent of a Central Excise would not have ventured to record his own findings about the matters like burning losses or other relevant issues and would have chosen to avail the services of a Metallurgical Expert. What we have extracted above is just a sample. The whole order is full of such discussions and instances. It is on the basis of such an exercise, that the Assessing Officer arrived at the conclusions that the undisclosed income on account of the improper disclosure, or suppression of the production for various assessment years is Rs.1,22,86,712/-. Even the expenditure incurred for purchase of raw materials became the subject-matter of extensive discussion, without indicating as to how the purchase of raw material can have any impact upon the income of an assessee, that too, of a manufacturing company.

In the order of assessment, which runs into 31 closely typed pages, such instances are galore.

16. Obviously, to analyse and understand the approach of the Assessing Officer, the Tribunal discussed the matter at length. The order passed by it runs into 48 pages. At more places than one, it was pointed out that the stock available on ground, cannot be compared or verified with reference to the RG-I register. It was also pointed out that by-products or waste materials, such as slag, was treated by the Assessing Officer as the main product or an income yielding material and the conclusions were arrived at, only on the basis of assumptions. We agree with the findings recorded and view expressed by the Tribunal.

17. An Income Tax Officer cannot carry out the functions of an authority under the Central Excise Act and arrogate to himself the power to determine the quantity of production, or to utter a final word on the intricacies of the manufacturing process, that too, without referring to any reliable material. The Assessing Officer, in the instant case, was totally unsuited for undertaking the activity of determining the exact production of the material, which itself involves very complicated procedures."

35. Similarly, the **Hon'ble Supreme Court** in the case of **Saraswati Industrial Syndicate Ltd. (Supra)** has held that neither the ITO nor the High Court were entitled to make statements of technical matters for which no basis has been laid down on record and the relevant findings reads as under:-

"6. We can understand that the authorities declined to rely the experts' opinion because he was not produced for cross-examination. But neither the ITO nor, indeed, the High Court were entitled to make statements on

technical matters for which no basis had been laid on the record by either the revenue or the assessee. If the High Court was of the view that further material was required, the appropriate course was to require the Tribunal to take further evidence and draw up a supplemental statement of case.”

36. In the instant case, however, we find that the Assessing Officer has proceeded ahead and basis his own investigation and understanding of the mining process involved, and basis his own calculation and understanding of variables has worked out the quantum of clay which could be extracted from one of the mines owned by the assessee without referring the matter to the domain experts in the field of mining such as geologists and mining engineers. Such an action on the part of the Assessing officer cannot be upheld especially in light of aforesaid decisions wherein the Courts have held that “an Income Tax Officer cannot carry arrogate to himself the power to determine the quantity of production, or to utter a final word on the intricacies of the manufacturing process, that too, without referring to any reliable material. The Assessing Officer, in the instant case, was totally unsuited for undertaking the activity of determining the exact production of the material, which itself involves very complicated procedures.” Further, we find that basis such calculation, the Assessing officer has determined the shortfall or suppression in the clay production vis-à-vis production disclosed by the assessee in respect of one of the mines. Further, using the same percentage of suppressed production, he has proceeded ahead and worked out proportionate suppression of production in the other two mines without getting into specific of functioning of such mines which again cannot be accepted. Without getting into the merits of the formula so arrived by the Assessing officer, as we find ourself not competent enough to comment upon, we find that effectively, the AO has tried to determine the quantum of clay which could potentially be extracted from the

mines and that's where whole case of the Revenue rest. The question for consideration here is not the potential extraction of clay rather the actual clay which has been extracted from the mines and which has been sold/dispatched during the year under consideration and which has not been disclosed in the return of income and what credible material is available on record in support of such findings. We however find that there is no material on record and no finding recorded by the AO that quantum of clay so determined by him as part of suppressed production has been actually dispatched and sold and more so, when the assessee's activities comes under the jurisdiction of State Mining Department and both its production and dispatches are closely monitored by the Mining Department. As held by the Hon'ble High Court in case of CIT vs. Shri Girija Smelters (P) Ltd (supra), the occasion to levy income tax would arise, only when the product in question was found or alleged to have been sold, and the sale proceeds, constituting income were not reflected in the returns. It was not even alleged that the product shown in the form of discrepancies, was sold at all. Further, we find that royalty assessments were carried out by the Mining Department without any adverse findings and copy of royalty assessment orders, copy of monthly returns, details of production at mines and dispatches from the mines and reconciliation thereof were admittedly furnished before the lower authorities and even acknowledged by the Id CIT(A) and no discrepancy has been highlighted therein either by the AO or by the Id CIT(A) and there is no material on record which highlight dispatches from the mines without paying the requisite royalty. In light of aforesaid discussions, we therefore find that there is no basis for alleging suppression of production by the assessee and the findings of the lower authorities are hereby set-aside.

37. In light of aforesaid discussions and in the entirety of facts and circumstances of the case, we donot find any justifiable basis for rejection of

books of accounts by the Assessing officer. Consequentially, the addition so made by the AO and confirmed by the Id CIT(A) is hereby set-aside and directed to be deleted.

In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 11/03/2020.

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 11/03/2020

*Ganesh Kr.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s Shanta Sales Corporation, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward-6(1), Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 231/JP/2017}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar