

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "A" : NEW DELHI]
(THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT
A N D
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA. No. 5675/Del/2017
Assessment Year : 2011-12.

Asstt. Commissioner of Income Tax,
Circle : 2 (2)
New Delhi.

M/s. Anjani Steels Limited,
Vs. Unit No. 503, Fifth Floor,
DDA Building, Distt. Centre,
Laxmi Nagar, Delhi – 110 092.

PAN : AABCA3530D

(Appellant)

(Respondent)

Assessee by : Shri Ved Jain, Adv.; &
Shri Ashish Goel, Adv.;

Department by : Shri R. K. Gupta, Sr. D. R.;

Date of hearing : 07/10/2020.

Date of order : 23/10/2020.

ORDER

PER SUCHITRA KAMBLE, JM :

This appeal is filed by the Revenue against the order dated 06.06.2017 passed by the Commissioner of Income Tax (Appeals)-1, New Delhi, for assessment year 2011-12.

2. The Revenue has raised the following grounds of appeal :-

“ 1. On the facts and in the circumstances of the case, the Id. CIT (Appeals) has erred in deleting the disallowance of Rs.6,09,43,809/- made by the Assessing Officer on account of difference in opening stock outside the books of accounts.

2. The Id. CIT (Appeals) erred in law in admitting additional evidence under Rule 46A without giving an opportunity to the Assessing Officer.

3. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal. “

3. The assessee company was engaged in the business of manufacturing of sponge iron and steel products and has two divisions i.e. sponge iron and power division in Raigarh and rolling division in Satharia. Original return of income was filed on 29.09.2011 declaring total income at Rs.4,28,98,880/-. The case was selected in scrutiny under Section 143(3) of the Income Tax Act, 1961 (the Act) and returned income was accepted by the Assessing Officer. Later on the Assessing Officer re-opened the assessment based on the observation that there is a difference in opening stock as on 1.04.2010 and closing stock as on 31.03.2010 of Rs.5,17,61,021/-. The Assessing Officer observed that excess deduction of Rs.7,08,845/- under Section 80IB of the Act was claimed by the assessee in its return of income. Accordingly reasons were recorded and notice under Section 148 of the Act was issued on 11.08.2015 to the assessee. Assessee filed its return of income in compliance to notice under Section 148 of the Act and the copy of reasons recorded was supplied by the Assessing Officer to the assessee. The assessee filed its objections wherein it was explained that the difference in inventory was due to the transfer of stock of rolling division of Rs.6,09,43,809/- along with other assets

and liabilities to M/s. Abhinav Steels Limited and net asset value of division has been shown as receivable in balance sheet as on 31.03.2011. The objections filed by the assessee were duly disposed of by the Assessing Officer vide order dated 9.12.2016. Thereafter assessment under Section 143(3) read with Section 147 of the Act was completed by the Assessing Officer making addition of Rs.6,09,43,809/- treating it to be stock sold outside books of accounts. The Assessing Officer also disallowed deduction under Section 80IB of the Act to the extent of Rs.7,09,944/-.

4. Being aggrieved by the assessment order the assessee filed appeal before the CIT (Appeals) and the CIT (Appeals) partly allowed the appeal of the assessee.

5. The Ld. DR submitted that the CIT (Appeals) erred in deleting the disallowance of Rs.6,09,43,809/- made by the Assessing Officer on account of difference in opening stock outside the books of accounts. The Ld. DR submitted that the assessee company asked to furnish the details of deduction claimed under Section 80IB of the Act and also show cause as to why the excess deduction made not be disallowed as the assessee did not furnish any justification for claiming excess deduction so claimed before the Assessing Officer during the assessment proceedings. Therefore, the Assessing Officer rightly disallowed the claim of the assessee. The CIT (Appeals) erred in law in admitting additional evidence under Rule 46A without giving an opportunity to the Assessing Officer.

6. The Ld. AR submitted that the CIT (Appeals) has rightly deleted the addition as there was a demerger and, therefore, assets transferred of Rs.39,28,60,136/- included the value of inventory amounting to Rs.6,09,43,809/- transferred to M/s. Abhinav Steels Limited. The same was fully disclosed by the assessee in its notes to accounts to its financial statements.

7. We have heard both the parties and perused all the relevant material available on record. During the hearing the Ld. AR submitted that application under Rule 26 filed by the assessee has to be withdrawn. Therefore, we are dismissing the application under Rule 26 as withdrawn by the assessee.

8. As regards the main appeal of the revenue, it can be seen that in the present case the CIT (Appeals) has given a categorical finding that the Assessing Officer disregarded the application for admission of additional evidence submitted by the assessee and there is no specific comment in the remand report filed by the Assessing Officer before the CIT (Appeals). The additional evidence was rightly admitted by the CIT (Appeals) as the copies/documents which were not available during the assessment proceedings were produced at the time of appellate proceedings before the CIT (Appeals). There is a clear finding by the CIT (Appeals) that in the balance sheet of the assessee company as on 31.03.2011 an amount of Rs.18,85,46,088/- was shown as receivable from M/s. Abhinav Steels Limited. The transfer of inventory of Rs.6,09,43,809/- was duly recorded in its books of accounts and thus the same cannot be regarded as the stock sold outside the books of

accounts. These documents were very well available before the Assessing Officer as well. In the financial statements of the assessee, all these calculations and the inventory specifications were given which was placed before the CIT (Appeals). Since the demerger has taken place on book value, therefore, there is no capital gain/loss as per the provisions of the Income Tax Act. Thus, there is no need to interfere with the finding of the CIT (Appeals). Hence, appeal of the Revenue is dismissed.

9. In result, appeal of the revenue is dismissed.

Order pronounced in the open court on : **23/10/2020**.

**Sd/-
(G. S. PANNU)
VICE – PRESIDENT**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

DATED : 23/10/2020.

MEHTA

Copy forwarded to:-

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	21/10/2020
Date on which the typed draft is placed before the dictating Member	21/10/2020
Date on which the typed draft is placed before the Other Member	23/10/2020
Date on which the approved draft comes to the C. DC/DC	23/10/2020
Date on which the fair order is placed before the Dictating Member for pronouncement	23/10/2020
Date on which the fair order comes back to the C. DC/DC	23/10/2020
Date on which the final order is uploaded on the website of ITAT	23/10/2020
Date on which the file goes to the Bench Clerk	23/10/2020
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	