

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER
AND HON'BLE MANISH BORAD, ACCOUNTANT
MEMBER

ITA.No.820/Ind/2018
Assessment Year 2013-14

M/s Anant Steel Pvt. Ltd,
170/10 Film Colony,
RNT Marg,
Indore
PAN : AACCA1283E : Appellant

V/s

DCIT-1(1),
Indore : Revenue

ITA.No.876/Ind/2018
Assessment Year 2013-14

DCIT-1(1),
Indore : Revenue

V/s

M/s Anant Steel Pvt. Ltd,
170/10 Film Colony,
RNT Marg,
Indore
PAN : AACCA1283E : Appellant

Assessee by	Shri S.N. Agrawal, CA
Revenue by	Shri S.S. Mantri, CIT
Date of Hearing	10.02.2021
Date of Pronouncement	10.03.2021

ORDER

PER MANISH BORAD, A.M

The above captioned cross appeals filed at the instances of the assessee and revenue pertaining to Assessment Year 2013-14 are directed against the orders of Ld. Commissioner of Income Tax-III (in short 'Ld. CIT'], Indore dated 31.08.2018 which is arising out of the order u/s 143(3) of the Income Tax Act 1961(In short the 'Act') dated 29.003.2016 framed by DCIT-1(1), Indore.

2. Assessee has raised following grounds of appeal:-

1.1 That on the facts and in the circumstances of the case the Ld CIT[A] erred in assessing net profit of the assessee company at Rs 1,45,33,103/- as against loss of Rs 3,62,89,590/- as declared in the books of account.

1.2/ That on the facts and in the circumstances of the case the Ld CIT[A] erred in rejecting the ground of appeal wherein it was claimed that case of the assessee company was selected under CASS and therefore addition need to be restricted to the reason for selection of the case under scrutiny only.

2/ That on the facts and in the circumstances of the case the Ld CIT[A] erred in approving the rejection the books of account of the assessee U/s 145(3) of the Act as correct without properly appreciating the facts of the case and submission made before her.

3.1] That on the facts and in the circumstances of the case the Ld CIT[A] erred in estimating the rate of net profit at 2.30 and thereby assessing the amount of net profit of Rs 1,45,33, 103/ _ as against net loss of Rs 3,62,89,590/ - as declared in the books of account without properly appreciating the facts of the case and submission made before him.

3.2] That on the facts and in the circumstances of the case the Ld CIT[A] erred in approving the reference of GP rate as considered by the Assessing officer of M/s Jaideep Ispal & Alloys P Limited & M/s Rathi Iron & Steel Ltd. Pithampur while estimating the income of the assessee even when data of the same was not provided to the assessee for its comments and more so when turnover and bank loans of these companies were very high as compared the same with the assessee company.

4. The assessee reserved its right to add, alter and modify the grounds of appeal as taken by the assessee.

3. Revenue has raised following grounds of appeal:-

1. Whether on the facts and in the circumstances of the case and in the law, the Ld CIT(A) is justified in restricting the addition of Rs. 11,34,71,546/- in terms of N.P. @ 2.3% of sales of Rs. 63,18,74,061/- though in the assessment order the AO made addition on account of

suppressed Gross Profit." .

2."Whether on the facts and in the circumstances of the case and in the law, the Ld CIT(A) is justified in upholding addition to extent of Rs. 1,45,33,103/- only as against suppressed business' profit determined by Assessing Officer at Rs, 11,34,71,546/- (wrongly mentioned as Rs. 10,16,87,108/- in assessment order).

The appellant craves leave to add to or deduct from or otherwise amend the above grounds of appeal.

4. Brief facts of the case as culled out from the records are that the assessee is a private limited company engaged in the business of running of rolling mills situated at Pithampur. The assessee filed its e- return of total income for the Assessment Year 2013- 14 on 29-09-2013 declaring total loss of Rs 3,23,10,986/-. Case selected for scrutiny and after considering the submissions of the assessee, assessment completed U/s 143(3) of the Act assessing total income at Rs 9,59,44,715/- by the Ld. A.O after making following additions: -

S.No.	Nature of addition	Amount (Rs.)
1	Addition on account of estimating Net Profit @5% of declared turnover	10,16,87,108
2	Addition under section 40(a)(ia) of the Act	1,04,019
3	Addition on account of Capital Expenditure	53,500
	Total addition	10,18,44,627

5. The assessee preferred an appeal before the Ld CIT(A).

The Learned CIT(A) following the order as passed for the Assessment Year 2012- 13 restricted the amount of Net profit at 2.30% of total sales at Rs 1,45,33,103/- as against loss of Rs 3,62,89,590/- shown by the appellant. The Ld CIT(A) also deleted the addition made by the assessing officer invoking the provision of section 40(a)(ia) of the Income Tax Act.

6. Against the order as passed by the Ld CIT(A) both the assessee and department both are in appeal before the Tribunal.

7. We will first take up the assessee's Appeal ITA No. 820/Ind/2018.

8. Ground No.1.1 raised by the assessee seems to be general in nature which thus needs no adjudication.

9. As regards Ground No.1.2 challenging the scope of

scrutiny by Ld. A.O, since no specific submissions have been made by Ld. Counsel for the assessee before us, it seems that assessee is not interested to press this ground and therefore the same is dismissed as not pressed.

10. Ground No.2 raised by the assessee challenges the finding of Ld. CIT(A) confirming the action of the Ld. A.O rejecting the books of accounts u/s 145(3) of the Act and estimating the Net Profits.

11. Brief facts relating to this issue are that the turnover of the assessee decreased to 63.18 crores from the turnover of Rs.91.10 crores in immediately preceding year. Net Profit is also in negative at (-) 5.74% as against net profit @ 0.5% in the preceding year. On observing these facts Ld. A.O sought various information from the assessee in order to examine that whether the books of accounts have been properly maintained giving the correct results at the end of the year after considering the submissions of the assessee rejected

the book results u/s 145(3) of the Act on account of the following reasons:-

1. *Freight expenses in connection with the scrap purchased from M/s Anant Trading Company booked in the book of the assessee company and not booked in the book of M/s Anant Trading Company.*
2. *Freight receipt in case of scrap purchased from M/s Hothour Ispat P Limited not found available.*
3. *In connection with the URD scrap purchased in cash the assessee has only maintained a hand written paper file, few of these slips were scanned and paste in the body of order.*
4. *Freight amount increased from Rs.1,92,59,266/- to Rs.2,10,99,914/- and the amount of freight was paid in two or three days.*
5. *The amount of wages increased from Rs.40,30,663/- to Rs.52,81,000/- and no register were maintained by the assessee.*
6. *Gas & Fuel was also increased from Rs. 4,03,19,812/-*

to Rs.5,78,69,121/- but the assessee has not furnished any justification for the same.

7. The amount of excise duty was not included in the figure of closing stock as per provision of section 145A of the Act.

8. Sundry creditor shown outstanding for last two to three years old.

9. The assessee has claimed burning loss at 12.48% and shown yield at 87.51%. However, in the case of iron industries the percentage of burning loss was hardly 4 to 5%.

10. The assessee has received shown cause notice from the excise department wherein total turnover of Rs.94.79 crores were noticed during the Asst Years 2010-11 to 2012-13.

11. Turnover of the assessee company reduced from Rs.91.10 crores to Rs.63.18 crores.

12. Based on the above information Ld. A.O estimated the Profit at 5% as against the negative profit of (-) 5.74% shown

by the assessee. When the assessee approached Ld. CIT(A) the action of the Ld. A.O rejecting the book results u/s 145(3) of the Act was held to be correct, however Ld. CIT(A) partly deleted by addition by estimating the profit at 2.3%. So the question before us is that “whether the Ld. A.O was justified in rejecting the book of accounts of the assessee u/s 145(3) of the Act and estimating the Net Profit”.

13. Ld. Counsel for the assessee referring to the detailed written submission and the paper book running from page 1 to 106 took us through all as well as the observation made by the Ld. A.O are contending that the allegation made by the Ld. A.O have no merit and the book results ought to have been accepted. Ld. Counsel for the assessee submitted that one of the basis was the show cause notice received from Central Excise Department for the alleged unaccounted turnover made by the assessee for Assessment Year 2010-11 to 2012-13 but the same will not stand for since the Hon’ble

Customs, Excise & Service Tax Appellate Tribunal, New Delhi vide its order dated 27.09.2018 deciding in favour of the assessee has quashed the show caused notice issued by Excise Department. Reliance also placed on various decisions mentioned in the paper book.

14. Per contra Ld. Departmental Representative vehemently argued and supported the order of Ld. A.O and submitted that Ld. A.O has rightly rejected the book results and estimated the Net Profit and the discrepancies pointed out by the Ld. A.O are correct.

15. We have heard rival contentions and perused the records placed before us and carefully gone through the submissions made by both the sides. Through Ground No.2 assessee has challenged the finding of Ld. CIT(A) confirming the action of Ld. A.O rejecting the book results u/s 145(3) of the Act estimating the Net Profit.

16. We observe that Ld. A.O on noticing that the turnover of the assessee has decreased and the net profit has also decreased drastically, wanted to examine the correctness of the book results and in this process Ld. A.O examined the books of accounts and observed certain defects which in his view were sufficient to reject the book results. So in order to arrive at a conclusion that whether the case of the assessee is fit for rejecting the book results u/s 145(3) of the Act, we need to examine the correctness of the observations made by the Ld. A.O with available records before us. Therefore we will deal each of the observation one by one.

16.1 Freight expenses in connection with the scrap purchased from M/s Anant Trading Company booked in the book of the assessee company and not booked in the book of M/s Anant Trading Company.

16.2 Observation of Ld. A.O

On verification of scrap purchase it was noticed that the assessee company shown to purchase huge scrap from M/s

Anant Trading Company. On further verification it was noticed that the scrap coming from Bhavnagar or other station and directly delivered to assessee. The assessee claimed freight expenses in its books of accounts whereas the purchase claimed to shown from M/s Anant Trading Company. There is no justifiable reason filed by assessee as to why the freight expense not booked by M/s Anant Trading Company and directly claimed by assessee.

16.3 Submission made by Ld. Counsel for the assessee:

Anant Trading company was not an independent assessee but a trading division of the assessee company. That scrap from Bhavnagar (Gujarat] purchased through M/s Anant Trading Company. The scrap used for manufacturing transferred from Trading division [Anant Trading Company] to the manufacturing division. The amount of freight paid by the assessee company and also by M/s Anant Trading Company

16.4 Our finding

We find that Ld. A.O was not aware of the fact that M/s Anant Trading Company is a unit/trading Division of the assessee company namely M/s Anant Steel Pvt. Ltd. The observation of the Ld. A.O that purchases are being made

by M/s Anant Trading Company but no freight expenses were booked by them is not correct since the assessee company had made its purchases through its trading Division and booked freight expenses in his books. Therefore this defect pointed out by Ld. A.O is not correct.

17. Freight receipt in case of scrap purchased from M/s Hothour Ispat P Limited not found available.

17.1 Observation of Ld. A.O

On verification of transportation proof of some parties not found on record such as proof of one party Hothour Ispat P. Ltd. purchase of scrap shown by the company but no transportation proof found attached with bulky.

17.2 Submission made by Ld. Counsel for the assessee:

Most of the transport receipts as attached with the bills were verified by the assessing officer but the transport receipt as attached with the payment vouchers was not shown. Since, he called few month vouchers but transport receipt in respect of entire purchases from M/s Hothour Ispat P Limited are enclosed with this letter.

17.3 Our finding

We observe that the assessee had maintained necessary records and the corresponding charges of transport receipt are generally attached to the bills of scrap purchased from Hothour Ispact Pvt. Limited. As accepted by Ld. A.O most of the transport receipts were attached except few and those also are now been placed before us showing that assessee is maintaining proper records of scrap purchased from Hothour Ispact Pvt. Lt and the corresponding bilties of transport receipts. Thus we find no merit in this defect observed by Ld. A.O.

18. In connection with the URD scrap purchased in cash the assessee has only maintained a hand written paper file, few of these slips were scanned and pasted in the body of order.

18.1 Observation of Ld. A.O

URD Purchase : - During the year under consideration the assessee has shown purchase from URD (Unregistered

Dealer) of Rs.3,23,75,791/ -. On perusal of details it was noticed that the assessee has only maintained a hand written paper file, no voucher or other details maintained. The assessee made entire purchase in cash.

18.2 Submission made by Ld. Counsel for the assessee:

That entire URD purchase of scrap was properly recorded in the books of account. That financial transaction was properly recorded in the financial books and quantity records are also recorded in the Excise record of the assessee. The assessee company has also consumed scrap quantity for the purpose of its manufacturing. Hence, there was no reason to disbelieve on the purchases as shown by the assessee

18.3 Our finding

The concern of the Ld. A.O is only with regard to hand written vouchers in support of the scrap purchased from unregistered dealers. We observe that such type of purchase of scrap from unregistered dealers is a part of

regular business affair being carried out by the assessee since last many years. Assessee is registered with Central Excise Department and the inward and outward of all materials are under watch and duly recorded in the excise records. No such discrepancy has been observed by the Ld. A.O in this regard that such type of scrap purchased through hand written bills are not entered in the excise records. Since the quantitative details are not in dispute and the alleged purchases are duly accounted for in the regular books, in our view Ld. A.O was not correct in raising the doubt about the genuineness of the scrap purchased. Thus we find no merit in this defect observed by Ld. A.O.

19. Freight amount increased from Rs.1,92,59,266/- to Rs.2,10,99,914/- and the amount of freight was paid in two or three days.

19.1 Observation of Ld. A.O

The company has claimed freight inward charge of Rs.2,10,99,914/- whereas the last financial year shown to Rs.1,92,59,266/-. On verification of this account it was noticed that the assessee company has made most of the payment in cash. On perusal of payment vouchers it was noticed that all the vouchers were found unsigned and without revenue stamp. Further, on verification of freight payment it was also noticed that the assessee has debited freight payment on particular dates but the same was claimed to be paid in two-three days. For example the assessee company has debited freight payment to Balaji Roadlines, Bilari of Rs. 18,500/-, Rs.30,340/-, Rs.37,095/- and Rs.29,600/- on 06.04.2012 whereas the payment shown by the assessee in cash on 07.04.2012 of Rs.30,00,000/-, 08.04.2012 of Rs.30,000/- and 09.04.2012 of Rs. 25,535/-. It is very difficult to understand that the driver or truck operator has delivered the goods on particular date and received payment in cash in two three days and even the operators are not belonged to Indore but outside.

19.2 Submission made by Ld. Counsel for the assessee:

That due to increase in the price of diesel and from distance where the scrap was purchased by the assessee. The amount of freight was increased in this year as compared the same with the previous year. The entire transport receipts are available with the assessee for verification.

19.3 Our finding

Ld. A.O observed that freight expenses has increased to Rs,2,10,99,914/- from Rs.1,92,59,266/- incurred in preceding year. Normally the increase in freight could be on account of change in location of purchase of raw material or increase in the rate of purchase or incurred in purchase of material. As far as freight receipts are concerned the assessee has maintained all of them and Ld. A.O has no doubt about it. The concern was with regard to payment in cash and secondly delay in payment. It is not the case of revenue that the payment in excess of Rs.35,000/- has been made in cash during the year to a person on a particular day. There are few instances before us wherein the freight payment of Rs.35,000/- has been paid in two instalments but there is no observation of any excess freight being paid. As submitted by Ld. Counsel for the assessee trucks coming from outstation stays for couple of days for

unloading and then taking new assignment. This seems to be a reason for making few of payments after one or two days to the truck drivers. One more important fact brought to our notice and not opposed by the revenue authorities that the quantity of scrap purchased from outside Madhya Pradesh has increased from 14031.868 MT to 14147.220 MT and also the average amount of rate per MT have increased from Rs.1372 per MT to Rs.1491/- per MT. Increase in fuel prices is also a reason. All these facts indicates that there is no discrepancy in the freight expenses paid by the assessee during the year and the observation of the Ld. A.O raising concern and doubting the correctness of the facts on this point is not found to be correct.

20. The amount of wages increased from Rs.40,30,663/- to Rs.52,81,000/- and no register were maintained by the assessee.

20.1 Observation of Ld. A.O

(v) The assessee company has claimed wages & allowance of Rs.52,81,000/- during the year whereas in last financial year the same was claimed of Rs.40,30,663/-. In spite of decrease in turn over the wages & allowances were increased. On verification of books of accounts it was noticed no wages and allowances payment registers maintained by the company and the company has only produce ledger in which month wise consolidated payment reflected. Except month wise summary nothing was produced for verification.

20.2 Submission made by Ld. Counsel for the assessee:

The amount of wages as paid by the assessee was increased due to increased in the rate of wages as paid and for new employment. The assessee keep full strength of staff in its Plant. However, production depends on demand of the product of the assessee. The assessee has also deducted PF and ESIC on entire amount of wages as paid. The salary/wages register was also maintained by the assessee company and verified by the PF / ESIC authority.

20.3 Our findings

The Ld. Assessing Officer observed that the amount of wages was increased from Rs.40,30,663/, to Rs 52,81,000/- and no register were maintained by the assessee. The

said version of the assessing officer is factually not correct as the assessee has properly maintained wages register and on entire amount of wages Provident Fund (In short 'PF) and Employees State Insurance Contribution (In short 'ESIC') is deducted and paid. The amount of wages was increased due to increase in the wage rate in this year as compared to last year. Salary sheet prepared in excel with the corresponding challans of PF and ESIC are placed on record. Copy of statement showing the Month, Number of Employees, total wages paid and average wages paid by the assessee is filed and on perusal of the same we find that the amount of average wages paid by the assessee increased in this year. Under these given facts where the regular records of wages and payments of PF and ESIC and sufficient material on records supports the increase in the wages expenditure during the year. Thus observation of Ld. A.O challenging the correctness of the wages

expenditure has no merits and thus in our view this is not a defect to reject the book results.

21. Gas & Fuel was also increased from Rs. 4,03,19,812/- to Rs.5,78,69,121/- but the assessee has not furnished any justification for the same.

21.1 Observation of Ld.A.O.

(vi) During the year under consideration the assessee company has claimed Gas &, Fuel of Rs.5,78,69,121/- whereas the same was claimed in last year of Rs.4,03,19,812/-. There is no justification of increase in this expense was found acceptable while the turnover was decreased.

21.2 Submission made by Ld. Counsel for the assessee:

The Gas & Fuels received from GAIL, a government undertaking. The amount of Gas & Fuel was increased in this year as compared the same with the last year, since, the rate of GA was increased in this year and minimum supply guaranteed by the assessee company.

21.3 Our findings

The assessing officer in this case observed that the amount of Gas & Fuel increased from Rs 4,03,19,812/- to Rs 5,78,69,121/- . We observe

that the Gas to the Plant is supplied by Gas Authority of India Limited (In short 'GAIL) through pipe line Complete details of Gas supplied and corresponding bills were produced before the Ld. Assessing Officer. The same is also placed before us. The amount of GAS & Fuel expenses have increased due to hike in the price of GAS in this year. Copy of account of Gas & Fuel in the books of account of the assessee with corresponding bills are placed before us. Month-wise Gas & Fuel consumed by the assessee and corresponding amount of bills are filed. On perusal of the same we find that there is a decrease in the consumption of gas used during the year but there is an increase in the price of gas supplied by GAIL. This fact has not been rebutted by Ld. Departmental Representative. There is increase in the gas and fuel expenses incurred by the assessee during the year even though the turnover has decreased, but the increase in price is beyond the

control of the assessee. We therefore find no reason to doubt the genuineness of gas and fuel expenses incurred during the year. This fact noticed by Ld. A.O regarding the anomaly in gas and fuel expenses has no merits.

22. The amount of excise duty was not included in the figure of closing stock as per provision of section 145A of the Act.

22.1 Observation of Ld. A.O.

The assessee company has not included excise duty component while calculating the closing stock and claimed that the company has maintained closing stock of exclusive method. Section 145A of Income Tax Act provides that the inventory worked out in accordance with the method of accounting regularly employed by the assessee must be further adjusted to include the amount of any cess, duty or tax actually paid or incurred. The relevant provisions 145 of the LT Act are as under:

145A (a). Notwithstanding anything to the contrary contained in section 145 (a) the valuation of purchase and sale of goods and inventory for the purposes of determining the income chargeable under the head I Profits and gains of business or profession I shall be in accordance with the method of accounting

regularly employed by the assessee; and further adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods to the place of its location and condition as on the date of valuation.

Explanation. – For the purposes of this section, any tax, duty, cess or fee (by whatever name called) under any law for the time being in force, shall include all such payment notwithstanding any right arising as a consequence to such payment;

22.2 Submission made by Ld. Counsel for the assessee:

The assessee company has followed the exclusion method, the amount of Excise duty was not debited in the Profit & Loss account and therefore the same was not included in the figure of Closing stock. The said treatment is also approved by the Hon'ble Apex Court In the case of CIT vs M/s Dynavision Limited [Appeal No 197 of 2005] as reported in 82 CCH 0211(ISCC) , copy enclosed.

22.3 Our findings

The assessing officer observed that the assessee has valued its stock following the exclusion method. It was explained that in both the method the amount of freight remains same. Since, in the inclusive method the amount of taxes paid at the time of purchase of raw

material needs to be included in the figure of closing stock and at the same time the amount of taxes included in the figure of closing stock requires to be debited in the Profit & Loss account under the head of Taxes on closing stock. Thus, on one hand the amount is shown on debit side of the Profit & Loss account for the amount of Taxes paid on closing stock and at the same time the valuation of the closing stock is also increased by the same amount. Hence, effectively there is no change in the overall profitability of the assessee company. Further such treatment is as per principle laid down by the Hon'ble Apex Court in the case of CIT vs M/s Dynavision Limited 1 Appeal No 197 of 20051 as **reported in 82 CCH 0211**[ISCC]. Therefore there is no merit in the observation of the Ld. A.O regarding the applicability of provisions of Section 145A of the Act.

23. Sundry creditor shown outstanding for last two to three years old.

23.1 Observation of Ld.A.O.

(viii) On perusal of creditor list submitted by the company it was noticed that some creditors are shown very old and the assessee has continuously claimed the same as liability. M/s Janki Ispat P. Ltd. amounting to Rs.2,00,966/- shown same from 31.03.2011 to till date. Similarly, some other creditor shown same from 31.03.2012 and 31.03.2013 and no proof of payment furnished by the company till the date.

23.2 Submission made by Ld. Counsel for the assessee:

The amount of sundry creditors outstanding for more than three years old and not payable was written off in the books of account by the assessee voluntarily. The assessee in this year also written off an amount of Rs 1,53,02,916/- in its books of account

23.3 Our findings

Ld. A.O on observing that some of the sundry creditors are outstanding for 2 to 3 years raised concern about their genuineness. It was brought to our notice by Ld. Counsel for the assessee that past few years have been a difficult time in steel industries there was a steep fall

in the steel prices. Payment to creditors were delayed due to lack of funds. Negotiations were made for decrease in the purchase amounts. In some cases due to poor quality there was some disputes with the creditors and amount was not paid. The assessee has voluntarily written off some of the creditors appearing in its book of accounts which are more than 3 years old and the same have been credited to the Profit & Loss account. It thus shows that in normal course of business such entries occurs as most times the creditors are not paid due to poor inability or other reasons and some times assessee do not received the payment from sundry debtors. But the assessee is writing off the sundry creditors not payable at its own and offering as revenue in Profit & Loss Account. So there remains no reason to question the genuineness of the sundry creditors appearing in the books of accounts. Thus it is not a defect to question the book results.

24. The assessee has claimed burning loss at 12.48% and shown yield at 87.51%. However, in the case of iron industries the percentage of burning loss was hardly 4 to 5%.

24.1 Observation of Ld. A.O

On perusal of production outcome shown by the company it was noticed that the company has shown burning loss @12.48% and yield @87.51% . In the manufacturing of iron industries the burning loss comes hardly 4 to 5%. Therefore it is clear that Assessee Company has not shown actual production result.

24.2 Submission made by Ld. Counsel for the assessee:

That in Iron industries scrap/burning losses may be varies between 4 to 5% but in case of rolling mills. the percentage of scrap/ burning losses incurred at two stages. One, at the stage of consumption of scrap to MS Ingots and second from MS Ingot to Steel Bar. The percentage of burning loss during the process from MS Scrap to MS Ingot varies between to 5 to 7% and also from Ingot to Steel Bar the percentage of burning loss was around 6%. Hence, in one stage the percentage of burning loss was around 6% only. The scrap and burning losses as shown by the appellant was duly accepted by the Excise department.

24.3 Our findings

The assessing officer observed that the assessee has claimed burning loss at 12.48 and shown yield at 87.51% and further claimed that in iron industries the percentage of burning loss is hardly 4 to 5%. We however find merit in the submission made by Ld. Counsel for the assessee that in Iron industries scrap/burning loss varies between 4 to 6% but in case of rolling mills, the percentage of scrap is at two stages, one at the stage of consumption of scrap to produce MS Ingots and second stage from consumption of MS Ingot to Steel Bar. The percentage of burning loss during the process from Scrap to MS Ingot varies between to 5 to 7% and also from Ingot to Steel Bar the percentage of burning loss is around 6%. Hence, in one stage the percentage of burning loss is around 6 only. The percentage of burning loss also depends upon the quality of raw material purchased by the assessee. The percentage of burning loss in case of URD purchase

is comparatively higher than scrap purchased from registered dealer or from industries. Ld. Departmental Representative also could not controvert the fact that the percentage of burning loss shown by the assessee has been duly accepted by the Excise Department in this year as well as in the previous years. It seems that Ld. A.O was not clear about the type of business the assessee is engaged into as he has adopted the basis of iron industries whereas the assessee is into the business of rolling mills. The percentage of burning loss shown by the assessee is commensurate to the burning loss shown in other rolling industries. We thus find no defect in the books of account with regard to the claim of burning loss and the yield shown during the year.

25. The assessee has received shown cause notice from the excise department wherein total turnover of Rs.94.79 crores were noticed during the A.Ys 2010-11 to 2012-13.

25.1 Observation of Ld. A.O

Here it is pertinent to mention that the case of Assessee Company the central excise department has conducted search action during FY 2011-12 on 05.01.2012. The central excise department has found that the assessee company has made unaccounted sale almost equal to sales declared in books of accounts. The DGCEI has conducted search at business premise and office maintained by the company and seized various incriminating documents and books of accounts and prepared inventory of stock. Later on, after scrutinizing the documents and books of accounts and found that the assessee has made unaccounted sales more than Rs.97,00,00,000/- during the year. Further, the Central Excise Department has worked the unaccounted production for AY 2010-11, AY 2011-12 and 2012-13. On the basis of information received from Commissioner of Central Excise it was found that the Commissioner of Central Excise has prepared annexure A to worked out assessable value (turnover) for different years. The same is reproduced below :-

AY	Assessable value (turnover)
2010-11	Rs.2,11,34,335/-
2011-12	Rs.15,26,18,611/-
2012-13	Rs.77,41,64,850/-
Total	Rs.94,79,17,806/-

The above unaccounted turnover is found by the Excise

Department during search. This is clear evidence that Assessee Company has not shown actual turnover and suppressed its income on regular basis.

25.2 Submission made by Ld. Counsel for the assessee:

Show cause notice from excise department was issued on the basis of loose papers and also on the basis of presumption which was not accepted by the assessee but challenged before the appropriate forum in excise department. Hon'ble CESTAT quashed the show cause notice as issued by the Commissioner of Central Excise & Customs. Hence, on the basis of that show cause notice neither sales can be estimated nor any adverse view can be taken in the Asst Year 2013-14.

25.3 Our findings

We observe that the Ld. A.O raised concern about the correctness of the sales turnover shown by the assessee on the basis of proceedings carried out by Excise Department in the case of assessee for Assessment Year 2010-11 to Assessment Year 2012-13 alleging that the assessee had unaccounted sales turnover of 94.79 crores. The show cause notice was issued on the basis of presumption and the same was also challenged by the assessee company before CESTAT.

CESTAT vide its order dated 27.9.2018 has quashed the show cause notice as issued by the Commissioner of Central Excise & Customs. The relevant finding of Customs, Excise & Service Tax Appellate Tribunal (In short 'CESTAT') in its order dated 27.9.2018 is at page 25 placed at page 85 and 86 of the paper book and reads as follows:-

“25. In view of aforementioned facts and settled position of law, we hold that the allegation of clandestine manufacture and removal of TMT bars, made in the SCN, on ASPL is merely on assumption and presumption without any material evidence corroborating the said allegation. The demand of duty on ASPL, therefore, is not sustainable. As demand of duty itself is not sustainable, no interest or penalty could be imposed on ASPL as well as on other appellants on whom penalties were imposed under Rule 26 of the Central Excise Rules, 2002 and for this reason we are not dealing with their appeals separately”.

From the above finding of CESTAT it is clear that the assessee has been held to have made no unaccounted turnover in the assessment year 2010-11 to Assessment

Year 2012-13 and assessee has been given a clean chit. Therefore the basis of Ld. A.O of questioning the correctness of the turnover of the instant assessment year is not correct and thus liable to be dismissed as the assessee has succeeded before the CESTAT and there is no specific observation of the Ld. A.O to have noticed any incidence of unaccounted turnover during the year under appeal.

26. Turnover of the assessee company reduced from Rs.91.10 crores to Rs.63.18 crores.

26.1 Observation of Ld. A.O

It is clear from above that the assessee company has not disclosed actual turnover but huge expenses. The comparative chart of expenses is reproduced below :-

Particulars	AY 2013-14	AY 2012-13
Turnover	631874061	911020141
Freight inward	21099914	19259266
Wages & allowances	5281000	4030633
Power charge	198691991	175422274

The turnover of the company has decreased but various expenses related with manufacturing of goods has been increased. In the above context, the book result shown by the assessee firm is found not acceptable. The Gross Profit and Net Profit shown by the assessee firm are appeared very low and deliberately. Hence, books of account of the assessee firm deserves to be rejected s/s 145(3) of the Income tax Act, 1961 and gross profit of the firm is being calculated as per business trend of this field. Vide order sheet entry dated 22.03.2016 the AR of assessee was show caused as to why the books of accounts should not be rejected u/s 145(3). In this connection the AR of assessee replied on 28.03.2016 and submitted explanation which was not found acceptable.

26.2 Submission made by Ld. Counsel for the assessee:

The amount of sales was reduced from Rs 91.10 crores to Rs 63.18 crores due to low demand of Domestic steel bar. Since, heavy reduction in the price of steel due to Chinese steel available at low rate.

26.3 Our findings

The assessing officer observed that the total turnover of the assessee company has reduced from Rs 91.10 crores to Rs 63.18 crores. This is the factual finding and for this

reason only, the assessee company incurred huge losses. As claimed by Ld. Counsel for the assessee due to very low demand of the product of the assessee, the fixed expenses as incurred by the assessee remained same or rather increased in this year and this was the main reason for incurring losses..

The assessee has not incurred losses as far as consumption of material with corresponding sales are concerned, the same is verifiable from the following chart:-

S.No.	Particulars	31.03.2013	31.03.2012
1.1	Gross Sales	71,01,76,685	91,10,20,141
1.2	Less Excise duty	7,84,34,016	8,53,32,420
	Net sales(Net of excise duty)	63,17,42,669	82,56,87,721
2.1	Opening stock of finished goods	9,50,09,003	7,04,04,995
2.2	Raw material consumed	42,69,63,302	58,35,25,790
2.3	Traded Goods purchased	12,58,499	10,24,716
	Total	52,32,30,804	65,49,55,501
2.4	Less closing stock of finished goods	11,15,55,115	9,50,09,003

	Cost of goods sold	41,16,75,689	55,99,46,498
	Margin on sale of goods prior to direct expenses	22,00,66,980	26,57,41,223
	% of margin	34.83%	32.18%

In view of the above, the assessee earned higher rate of profit on sales made by it. But, due to heavy direct expenses the amount of losses was incurred in this year as compared the same with the last year.

Comparative chart of Direct expenses incurred by the assessee vis-a-vis the sales is shown below:-

S.No.	Particulars	31.03.2013	31.03.2012
1.1	Gross Sales	71,01,76,685	91,10,20,141
1.2	Less Excise duty	7,84,34,016	8,53,32,420
	Net sales(Net of excise duty)	63,17,42,669	82,56,87,721
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	Total	52,32,30,804	65,49,55,501
2.4	Less closing stock of finished goods	11,15,55,115	9,50,09,003
	Cost of goods sold	41,16,75,689	55,99,46,498

	Margin on sale of goods prior to direct expenses	22,00,66,980	26,57,41,223
	% of margin	34.83%	32.18%
3.1	Direct expenses	29,02,91,777	26,31,42,343
3.2	% of direct expenses on net sales	46%	32%

That from the above chart it is clear that losses were incurred by the assessee company due to increase in direct expenses. The percentage of direct expenses to net sales in last year was around 32% only which has increased to 46% in this year. For this reason only the assessee company has incurred huge losses.

The detail of direct expenses as incurred by the assessee in this year and that of last year is as under:-

S.No.	Particulars	31.03.2013	31.03.2012
1.1	Wages & Allowance	52,81,000	40,30,633
1.2	PF contribution on wages	5,05,973	4,49,752
1.3	ESIC contribution on wages	2,17,013	1,71,395
2	Power charges	19,86,91,991	17,54,22,274
3	Gas & Fuels	5,78,69,121	4,63,19,812
4	Consumption of Refractories	38,10,233	41,61,514

5	Consumption of stores and spares	15,79,796	19,65,792
6	Consumption of Mould and Dies consumes	2,03,77,015	3,02,77,099
7	Machinery repairs & maintenance exp	5,16,792	1,01,053
8	Water charges	2,05,274	2,43,020
9	Municipal taxes	7,42,004	NIL
10	Electricity expenses	4,95,565	
		29,02,91,777	26,31,42,343

That on perusal of the above, we find that major expenses have increased in this year as compared to last year. The sales in the case of the assessee was duly accepted by the sales tax department, copy of sales tax order passed along with reconciliation statement is placed before us. We observe that the assessee has written off the amount not payable on account of Freight and sundry creditors and shown the same as its other income. Since, the said amount is directly related to the purchase and freight both the amount relates to the direct expenses. Hence, the amount though credited in

the Profit & Loss account directly relates to the trading activities of the assessee company and rightly considered for calculating the gross profit.

27. The comparative charts of various items of manufacturing, trading and profit and loss account of preceding year and current year which have been arrived on the basis of regular books of accounts and quantitative details maintained by the assessee are in itself loud and clear to state that the percentage of margin has increased during the year but the percentage of direct expenses have increased much more than that which has resulted into losses. All the discrepancies observed by the Ld. A.O have been duly rebutted by the facts of the case which shows that the assessee has properly maintained the books of accounts and the Ld. A.O was not justified in rejecting the same and estimating the profits. Also the basis taken by the Ld. A.O about the alleged unaccounted turnover observed by the

Excise Department is no more a good basis since the assessee has succeeded before CESTAT and the alleged show cause notice for the unaccounted turnover has been quashed. We have gone through each and every fact relating to the observation made by Ld. A.O and come to the conclusion that no such discrepancy existed and we are thus satisfied with the losses incurred during the year. We thus set aside the finding of Ld. CIT(A) and are of the considered view that Ld. A.O grossly erred in rejecting the books of accounts of the assessee and proceeding ahead to estimate the net profit rate.

28. Accordingly Ground No.2 of the assessee's appeal is allowed.

29. As regards Ground No.3 is concerned through which the assessee has challenged the finding of Ld. CIT(A) estimating the net profit rate at 2.3%, we find that this ground becomes infructuous as we have already allowed assessee's Ground No.2 and held that Ld. A.O was not justified in rejecting the

book of accounts and estimating the gross profit rate.

30. Ground No.4 is general in nature which needs no adjudication.

31. Now we take up Revenue's appeal wherein the sole grievance of the revenue is against the finding of Ld.CIT(A) sustaining the addition of estimation of net profit at 2.3% of the turnover as against the net profit of 5% applied by Ld. A.O after rejecting the books of accounts u/s 145(3) of the Act. We are of the view that all the grounds raised by the revenue deserves to be dismissed as we have allowed the assessee's ground that Ld. CIT(A) erred in approving the rejection of books of accounts of the assessee made by the Ld. A.O u/s 145(3) of the Act. Since we have examined the facts of the case and also found that the discrepancies noticed by the Ld. A.O are not correct as the assessee has properly maintained the quantitative records and books of accounts with supporting documents with regard to the discrepancies

noticed by the Ld. A.O. Since the books of accounts have been held to be correct and not liable to be rejected, the book results needs to be accepted by the revenue authorities, therefore there remains no possibility to estimate the net profit of the assessee. Since the ground of revenue relates to estimation of net profit only the same have been dismissed.

32. In the result appeal of the assessee raised vide ITA No.820/Ind/2018 is partly allowed and that of Revenue's Appeal raised vide ITA No. 876/Ind/2018 stands dismissed.

Order was pronounced in the open court on 10 .03.2021

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 10th March, 2021
/Dev

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR,
ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore