

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

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI GEORGE GEORGE K., JUDICIAL MEMBER

ITA No.1545/Bang/2018
Assessment year : 2014-15

The Deputy Commissioner of Income Tax, Central Circle 1(1), Bengaluru.	Vs.	Late Shri Vazhyel House Narayanan Kutty Menon By L/Rs Smt. Vijayalakshmi Menon Shri Urathe Krishna Prasad Smt. Febitha Kandan Kulangara Ms. Roshini Kulangara Urathe Ms. Meghna Kulangara Urathe Shri Pramod Menon Smt. Padma Vijayan Ms. Kangana Pramod Ms. Sanjana Pramod 6, 14 th Ward, KHB Colony, Sandur. Bellary Dist. PAN: AGXPM 5124G
APPELLANT		RESPONDENT

Appellant by	:	Shri B.K. Singh, CIT(DR)(ITAT), Bengaluru.
Respondent by	:	Shri B.S. Balachandran, Advocate

Date of hearing	:	23.09.2021
Date of Pronouncement	:	05.10.2021

ORDER

Per Chandra Poojari, Accountant Member

This appeal by the revenue is directed against the order dated 28.02.2018 of the CIT(Appeals), Gulbarga for the assessment year 2014-15.

2. The revenue has raised the following grounds:-

“1. The Order of learned Commissioner of Income-tax (Appeals) is opposed to law and facts of the case.

2. In the facts and circumstances of the case, CIT(A) failed to appreciate that though as per the e-auction conducted by MC/CEC, the amounts have become receivable by the assessee notwithstanding the claim of the assessee that material was partly lifted In FY : 2013-14 and partly in FY : 2014-15, for which required documentary evidence was not filed before the AO to prove the same. As such, it is reasonable to conclude that the AO's decision in considering the entire amount of Rs.12,83,60,000/- as sales during the year FY:2013-14, is not appreciated by the CIT(A).

3. The Ld.CIT(A) erred to place reliance on decision of ITAT in case of M/s M Hanumantha Rao as much as the order of ITAT was not on account of correct facts to hold that receipts/income arising from sale of e-auctioned iron ore is not liable to tax in AY:2012-13, when, M/s M Hanumantha Rao(firm) itself had offered such receipts for taxation on accrual basis by filing a revised return of income for AY:2012-13.”

3. The facts of the case are that the respondent-assessee had filed the return for AY 2014-15 on 22/11/2014 declaring a total income of Rs.3,97,55,770. During the course of assessment proceedings s/s.143(3) of the Income-tax Act, 1961 [the Act] the AO added a sum of Rs.10,91,75,982 as unaccounted sale proceeds of E-Auctioned Iron ore by Monitoring Committee, even though the said sales were accounted in

the subsequent AY 2015-16. The addition was so made on the ground that the income had accrued to the assessee in the subject assessment year itself and recognition of income therefore could not be deferred to the subsequent assessment year 2015-16.

4. The successful purchaser in the E-auction has 30 days to lift the goods and complete the payments. The monitoring committee would receive the sale proceeds and communicate the final entitlement after deducting the statutory dues including VAT and other charges, such as 10% / 20% of the sale proceeds towards the Special Purpose Vehicle (SPV), as per the directions of the Honourable Supreme Court. In this view, the assessee has accounted the sales in the subsequent assessment year on the ground that the income accrued to him only when the Monitoring Committee communicated the entitlements after the conclusion of the transaction of sale.

5. The assessee contested the assessment order before the CIT(Appeals), who allowed the appeal by deleting the addition of Rs.10,91,75,982 following the decision of ITAT, Bengaluru in ITA No. 158/Bang/2017 dated, 19/12/2017 in the case of M/s. M.Hanumantha Rao. The aforesaid case law relied upon is on the issue of year of accounting of e-auction sale in the case and pertains to the same jurisdiction, wherein the facts and circumstances of present case is exactly similar to the case decided by the ITAT.

6. The issue in this appeal is the sales of Rs.10,91,75,982 which assessee has declared in assessment year 2015-16, but the AO has assessed it for AY 2014-15 on Income accrual basis since only the bidding/E-auction has taken place during the FY 2013-2014 by the monitoring committee even though the sales has taken place by the monitoring committee during April and May 2014 for which the proof of

sales done by monitoring committee, the details of which are filed at page 10 to 29 of the PB. The assessee has filed Financial statements for AY 2015-16 for having accounted the sales of Rs.10,91,75,982 vide sales ledger at pages 8 and 9 of the PB and confirmation letters from parties for having received Iron ore from the assessee through the Monitoring Committee for which party ledger accounts for the period 01/04/2014 to 31/03/2015. Total sales of Rs.10,91,75,982/- are all done during the FY 2014-15 (AY 2015-16) only. Even the VAT at 5.5% and royalty is paid for the sales done by the Monitoring Committee only during FY 2014-15 by the purchasers and the same is reversed by the assessee in Journal entry. The assessee had furnished confirmation letters from various purchasers/bidders for having bid the material in previous year 2013-14 but sales and lifting of the entire quantity was done during the months of April and May 2014, (AY 2015-16) which was noted in detail by the AO vide para 5.3 of his order.

7. The CIT(Appeals) allowed the appeal considering the ITAT order. It is therefore submitted that it is a covered case in favour of the Assessee and accordingly the appeal of the Revenue is to be dismissed.

8. We have heard both the parties and perused the material on record. We come across the order of this Tribunal in the case of M/s. Veerabhadrappa Sangappa & Sons in ITA No.1054/Bang/2019 dated 8.12.2020 wherein it was held as under:-

“6.1. Ground No. 2.1& 2.2

These grounds raised by assessee are against addition of sale proceeds of declared stock amounting to Rs.25,59,99,429/- and undeclared stock amounting to Rs.24,64,49,021/-. Ld.AO observed that, sum of Rs.50,24,48,441/-(Rs.25,59,99,429/- + Rs.24,64,49,021/-), (being sale proceeds of declared and undeclared stock), was omitted to be offered to tax for year under

consideration. Placing reliance on monthly IBM(Indian Bureau of Mines) Return in respect of both Mining placed at pages 184-193 of paper book, Ld.Counsel submitted that MC calculated payment disburseable to assessee, based on stock declared in IBM returns, details of which is placed at page 198-201 of paper book. Sale proceeds of stock as per IBM returns were considered by MC as declared. Sale proceeds of stock not considered in IBM return were treated as undeclared stock by MC and transferred in entirety to SPV.

6.3. Sale of declared stock

During the year under consideration Ld.AO noticed that, MC sold iron ore belonging to assessee through E auction out of the declared stock. The sale proceeds of such declared stock was to the tune of Rs.25,52,89,418/-. Ld.AO during assessment proceedings, called upon assessee to explain, as to why, such sale proceeds was omitted to be offered to tax, being the year of sale, relevant to assessment year under consideration. Assessee in response, submitted that, though it followed mercantile system of accounting, did not offer said sum, since receipt of the same was highly uncertain. Assessee submitted that, revenue was recognised by assessee only on receipt basis, as per AS-9 issued by ICAI. It was submitted that, since there was uncertainty about collection of said revenue, recognition of such revenue was postponed to the extent of uncertainty involved, which was in accordance with theory of taxing only real income. It was submitted that, essential criteria for recognition of revenue is, consideration receivable from sale of goods should be reasonably determined, and since the consideration was not determinable within reasonable limits, recognition of revenue was postponed. Assessee, referred to ICDS-IV notified by Central Government for purpose of computation of income chargeable to Income tax under the head “profits and gains of business or profession”. It was submitted that, MC had complete control and command over declared stock. It was also submitted that MC had sole discretion to sell the stock. It was submitted that sale proceeds were to be received by MC from the buyers. Assessee submitted that, MC after making necessary deductions would disburse balance sale proceeds to assessee. Assessee submitted before Ld.AO that, it did not have any control over the value and time of receipt of sale

proceeds. It was thus contended before Ld.AO that, the amount of Rs. 25,52,89,418/- did not accrue to assessee, and therefore the same was not offered to tax during the year under consideration.

6.3.1. Assessee also submitted before Ld.AO that sum of Rs.25,52,89,418/- was received by assessee in subsequent years, and assessee offered the same to tax in assessment years being 2014-15 and 2016-17. Assessee also placed before Ld.AO, return of income and statement of computation of income for assessment years 2014-15 and 2015-16. Ld.AO observed that assessee was maintaining accounts on Mercantile system and hence the above said amount of Rs.25,52,89,418/-, should have been recognised as income by assessee for year under consideration. The Ld.AO noticed that Hon'ble Supreme Court directed CEC to sell the stock on behalf of assessee and to retain the sale proceeds on account of assessee/leaseholder. CEC was authorised to deduct towards SPV contribution, estimated cost for R&R plans and compensation for illegal mining and illegal dumping and to return the balance sale proceeds to assessee.

6.3.2. Ld.AO accordingly held that, there was no uncertainty of receipt of sale proceeds of the e-auctioned iron ore by the MC.

6.4. Sale of undeclared stock:

Ld.AO noticed that MC sold stock to the tune of Rs.24,64,49,012/- during the year under consideration on behalf of assessee. It was also noticed by Ld.AO that assessee had not declared the same as its income in the original return, and it was claimed as expenditure in the revised return of income. Ld.AO noticed that, the said amount was excluded from the sales revenue itself. It was submitted by assessee that the same did not accrue, as the same was diverted to SPV by MC. Assessee submitted that such stock sold by MC was not recognised by it in its books and was over and above the stock declared in IBM return. Assessee submitted that, such stock related to accumulated waste/debris, which was not recognised as saleable. It was submitted that, MC excavated such stock from accumulated dump, after suspension of mining activity, which was over and above stock declared in IBM return filed by assessee. Such stock was treated as undeclared by MC in payment advises, and therefore the sale proceeds arising from

sale of such stock does not belong to assessee. Assessee submitted that sale proceeds were never transferred to assessee of such undeclared stock, and the same was contributed to SPV.

6.4.1. Ld.AO therefore treated sale proceeds from such undeclared stock as income in the hands of assessee for year under consideration.

6.5. Revenue Recognition: Ld.AO observed that MC sold iron ore of assessee by E auction to the extent of Rs.50,24,48,441/- during financial year relevant to assessment year under consideration. The Ld.AO noted that, in profit and loss account, assessee claimed sum of Rs.50,24,48,441/- as expenditure. Ld.AO rejected recognition of revenue on receipt basis, as assessee followed mercantile system of accounting. Ld.AO referred to para 9 of decision of Hon'ble Supreme Court in case of Samaj Parivartana Samudaya vs State of Karnataka, (supra) wherein Hon'ble Court directed CEC/MC to pay to concerned leaseholder balance amount after adjusting contributions under various heads towards SPV for implementation of R & R plan etc. Ld.AO was of the opinion that, there was no uncertainty and nowhere there was any suspense of receipt of sale proceeds of such E- auction of iron ore from MC. Therefore, as per mercantile system of accounting, right to receive such amount accrued to assessee during the year under consideration which, cannot be diverted to subsequent assessment years. Ld.AO observed that, details of E auction sale by MC, was in the knowledge of assessee, and assessee was well aware of receipt of sale proceeds, which should have been accounted in books of account, in the year of sale itself (year under consideration), without postponing it till date of actual receipt of proceeds. Ld.AO thus held that, assessee acquired right to receive sale proceeds during the year under consideration, and therefore has to be considered as income for year under consideration.

6.6. Ld.AO thus observed and held as under:

“4.1. UNACCOUNTED SALE PROCEEDS OF - i) DECLARED STOCKS - RS.25,59,99,429/- & ii) UNDECLARED STOCKS - RS.24,64,49,012/- On going through the above table of this order, at Sl.No.1 & 2 of the said table it is noticed that the assessee firm has debited

an amount of Rs.25,59,99,429/- under the head Sale proceeds of declared stocks received in subsequent assessment years offered to tax and Rs.24,64,49,012/- under the head Sale proceeds of un-declare stocks - yet to be received. During the course of scrutiny proceedings, the assessee firm was requested to explain as to why the e-auctioned sale proceeds during the year of Rs.50,24,48,441/- (Rs.25,59,99,429/- + Rs.24,64,49,012/-) has been omitted to be offered to tax during the year of sale relevant to the Asst. Year under question.

4.1.a In response, the assessee firm had filed the objections at Para No.12 of letter dated: 21/01/2016 filed in this office on the same date, wherein, it has stated under : Relevant portion of the letter is extracted below:

"12. As regards sale proceeds of declared stocks and un-declared stocks: 1) It is submitted that the Assessee did not offer to tax sale proceeds of Rs.28,55,04,732/- relating to declared stocks and sale proceeds of Rs.24,64,49,012/- relating to un-declared stocks during the impugned assessment year for the reason that receipt of the same was highly uncertain.

2) It is submitted that in the instant case, Assessee is following mercantile system of accounting. In mercantile system, income is to be charged on accrual basis. Income is said to be accrued when there is a reasonable certainty of receiving such income. When the same cannot be determined with reasonable certainty, the recognition of such income should be postponed. 3) In this regard a reference may be made to Accounting Standard - 9 i.e. Revenue Recognition. The relevant extract of the same reads as under.'

"9. Effect of Uncertainties on Revenue Recognition

9.1 Recognition of revenue requires that revenue is measurable and that at the time of sale or the rendering of the service it would not be unreasonable to expect ultimate collection.

9.2 Where the ability to assess the ultimate collection with reasonable certainty is lacking at the time of raising any claim, e.g., for escalation of price, export incentives, interest etc., revenue recognition is postponed to the

extent of uncertainty involved. In such cases, it may be appropriate to recognise revenue only when it is reasonably certain that the ultimate collection will be made. Where there is no uncertainty as to ultimate collection, revenue is recognised at the time of sale or rendering of service even though payments are made by installments.

9.3 When the uncertainty relating to collectability arises subsequent to the time of sale or the rendering of the service, it is more appropriate to make a separate provision to reflect the uncertainty rather than to adjust the amount of revenue originally recorded.

9.4 An essential criterion for the recognition of revenue is that the consideration receivable for the sale of goods, the rendering of services or from the use by others of enterprise resources is reasonably determinable. When such consideration is not determinable within reasonable limits, the recognition of revenue is postponed.

9.5 When recognition of revenue is postponed due to the effect of uncertainties, it is considered as revenue of the period in which it is properly recognised."

4) A reference may also be made to Income Computation and Disclosure Standards (JCDS) - IV notified by the Central Government for the purposes of computation of income chargeable to income-tax under the head "Profit and gains of business or profession ". The relevant extract of ICDS —IV reads as under:

"4. Revenue shall be recognised when there is reasonable certainty of its ultimate collection. 5. Where the ability to assess the ultimate collection with reasonable certainty is lacking at the time of raising any claim for escalation of price and export incentives, revenue recognition in respect of such claim shall be postponed to the extent of uncertainty involved."

5) Thus, from the perusal of Accounting Standard 9 and JCDS - IV, it is submitted that, the revenue has to be recognised when there is a reasonable certainty of its ultimate collection. If the ability to assess the ultimate collection with reasonable certainty

is lacking, then the revenue recognition shall be postponed to the extent of uncertainty involved.

6) In the instant case, the MC had complete control and command over declared and undeclared stocks. As submitted above, it was the sole discretion of MC to decide to whom the aforesaid stocks have to be sold. The sale proceeds of the said stocks are received by MC from the respective buyers. MC, after making necessary deductions gives the balance sale proceeds to Assessee. In this entire process, Assessee has no control over the value and time of receipt of the sale proceeds.

7) Thus, it is submitted that as the amount of Rs. 28,55,04, 732/- and Rs. 24,64,49,0121-, did not accrue to the Assessee, there is no question of any liability of the same to tax during the impugned assessment years.

8) In the case of in State Bank of Travancore v. CIT [1986] 158 ITR 102 / 24 Taxman 337 (SC), the Honourable Supreme Court held as under:

"In determining the question whether it is hypothetical income or whether real income has materialised or not, various factors will have to be taken into account. It would be difficult and improper to extend the concept of real income to all cases depending upon the ipse dixit of the assessee which would then become a value judgment only. What has really accrued to the assessee has to be found out and what has accrued must be considered from the point of view of real income taking the probability or improbability of realisation in a realistic manner and dovetailing of these factors together but once the accrual takes place, on the conduct of the parties subsequent to the year of closing, an income which has accrued cannot be made 'no income'

9) In the case of United Nilagiri Tea Estates Co. v. Dy. CIT [2012] 210 Taxman 62 (Madras), the Honourable Madras High Court has held as under:

"8. In the background of the law thus laid down, what is to be looked at to test the real income that might be taken for working out an assessment for an assessee following the mercantile system of account is, the chances or

probabilities of realisation in a realistic manner to hold that there was a real accrual of income to the assessee company." 10) In the case of CIT v. Annamalai Finance Ltd. [2009] 319 ITR 1961[2010] 186 Taxman 296 (Mad.), the Honourable Madras High Court has held as under: "5. The recognition of revenue on accrual basis presupposes the satisfaction of two conditions viz., the revenue is measurable and that the revenue is collectable without any uncertainty. 11) Without prejudice to the above, it is submitted that amount of Rs.28,55,04,732/- has been received by the Assessee in the subsequent years and the Assessee has accordingly offered the same to tax in the subsequent assessment years 2014-2015 & 2015-2016. Copy of the return of income and statement of computation of total income of the assessment years 2014-2015 & 2015-2016 is enclosed herewith as Annexure 1. Therefore, the question of taxing the same in impugned assessment year does not arise."

4.1.b. From the above submission it is evident and fact that, the Monitoring Committee has sold the iron ore of the assessee firm through e-auction to the extent of Rs.50,24,48,441/- during the F.Y-2012-13 relevant to Asst. Year-2013-14, out of which Rs.25,59,99,429/- is received in the subsequent Asst. Years - 2014-15 & 2015-16 and Rs.24,64,49,112/- is yet to be received. Whereas, these E-auctioned sale proceeds of Rs.50,24,48,441/- have been claimed as expenditure by the assessee firm and debited to P & L A/c. However, the said sales proceeds of Rs.50,24,48,441/- is to be assessed as income on accrual basis in view of the accounting method (i.e. Mercantile System) followed by the assessee firm.

4.1.c. The submissions/explanations filed and judicial decisions relied on by the assessee firm have been gone through in detail. The contention of the assessee firm that, the Sale proceeds will be accounted and offered to tax as and when realised cannot be accepted and further, the judicial decisions relied on by the assessee firm have no direct nexus with the facts of the instant case as the Hon'ble Apex Court in its order dated: 18/04/2014 in WRIT PETITION (CIVIL) NO. 562 of 2009, referred above (in para.9) - Order that, the CEC was allowed to sell the stock on behalf of the assessee and to retain the sales proceeds on account of the assessee/leaseholder and the CEC was authorized to deduct

the assessee's compensatory and penal liabilities out of such sales proceeds and to return the balance proceeds to the assessee - Here it needs to be clarified that the CEC/Monitoring Committee is holding the sale proceeds of the iron ores of the lease holders, including the 63 leaseholds being the subject of this order. In case, the money held by the CEC/Monitoring Committee on the account of any leaseholder is sufficient to cover the payments under the aforesaid three heads, the leaseholder may, in writing, authorize the CEC to deduct from the sale proceeds on its account the amounts under the aforesaid three heads and an undertaking to make payment of any additional amount as compensatory payment. On submission of such authorization and undertaking, the CEC shall retain the amounts covering the aforesaid three heads and pay to the concerned leaseholder the balance amount, if any. It is expected that the balance amount, after making the adjustments as indicated here, would be paid to the concerned leaseholder within one month from the date of submission of the authorization and the undertaking. In the case of any leaseholder, if the money held on his account is not sufficient to cover the aforesaid three heads, he must pay the deficit within two months from today.

4.1.d. It is clear from the plain reading of the said order that there is nowhere suspense or uncertainty of Sales Proceeds of the said EAuctioned Iron-ore from the Monitoring Committee, whereas, in all the above judicial decisions relied on by the assessee firm, there was uncertainty of receipt of money, hence, the said cases relied on by the assessee firm cannot be accepted as the facts of cases differ from the instant case. Hence, the assessee's implicit plea that, even though sales had occurred in the relevant years, no income can be said to have accrued to the firm in the relevant year and/or since, the sales proceeds are retained by the CEC and therefore, the said sales proceeds will be offered to tax in the year of realisation also cannot be accepted. As there are only two recognized methods of accounting namely the Cash Method of Accounting and the Mercantile Method of Accounting. In Mercantile method of accounting, entries are posted in the books of account on the date of transaction when the rights accrue or liabilities are incurred, irrespective of the date of payment. / receipt. The right to receive the said retained amount has accrued to the assessee firm and it cannot be diverted on the plea contrary

to the accounting practice. Since the assessee firm is following accrual method of accounting, a part of receipt cannot be taken on piecemeal / receipt basis. Hence, the assessee's contention that the said amount is not liable to tax since the said amount was not actually received from the CEC/Monitoring Committee during the financial year, cannot be accepted.

4.1.e. Thus, the E-Auction sales took place on behalf of the assessee firm and the money was received from the purchaser of Iron-ore by the CEC/Monitoring Committee on account of the assessee firm. Hence, the assessee firm was required to reflect these Sales as Trading Receipts in its Books of Account keeping in view the mercantile system of accounting followed by the assessee firm and disclose the same in its return of income filed for the A.Y- 2013-14 being the Asst. Year under question without claiming the said amount as deduction in the P & L A/c.

4.1.f Further, the details of e-auction sale are available on public domain hoisted / posted by Monitoring Committee. Similarly, the Monitoring Committee also e-auctioned material with the consent of the Mine Owners and issued a sale order for lifting the material from the mines of concerned Mine Owner. From this, it is evident that the assessee was well aware of the e-auction sales and should have accounted the same in its books of accounts in the year of sale itself without postponing the same till the date of receipt of proceeds. Income may accrue to an assessee without actual receipt of the same. If the assessee acquires a right to receive the income, the income can be said to have accrued to him though it may be received later, on its being ascertained - CIT v. Shri Goverdhan Ltd. (1968) 69 ITR 675 (SC) / CIT v. Nandram Hunatram (1976) 103 ITR 433 (On). Receipt is not the only test of chargeability to tax, if income arises or accrues, it may become liable to tax - CIT v. Ashokbhai Chimanbhai (1965) 56 ITR 42 (SC) / CIT v. A.B.V Gowda (1986) 157 ITR 697 (Kar). Each year being a self contained unit, taxes of particular year is payable with reference to the income of that year as computed in terms of the Act - CIT Vs. British Paints India Ltd. (SC) 188 ITR 44. Accordingly, a sum equivalent to e-auction sale proceeds accrued / arised to the assessee for the financial year ending 31/03/2013 should be assessed in the relevant assessment year which is under consideration Hence, the entire E-auction

sales proceeds of Rs.50,24,48,441/- (Rs.25,59,99,429/- + Rs.24,64,49,012/-) claimed as expenditure / deduction are added back to the income returned and brought to tax. Ld.AO thus added sale proceeds amounting to Rs.50,24,48,441/in the hands of assessee for year under consideration. Aggrieved by order of Ld.AO, assessee preferred appeal before Ld.CIT(A).

6.7. Ld.CIT(A) observed and held as under:

3.1.) The assessee submitted that though it followed Mercantile system of accounting it did not offer the above amount of Rs.50,24,48,441/- as receipt of the same was highly uncertain and recognition of income was to be done only on receipt basis and relied on Accounting Standard-9 that is revenue recognition. It was submitted that as per Accounting Standard-9 (A S9) issued by ICAI, where there is an uncertainty about the collection of income/revenue, recognition of such income/revenue is to be postponed to the extent of uncertainty involved, which is also in accordance with the theory of taxing only the real income, which is a settled law as per various judicial proceedings. The AO however did not accept the contention of the assessee that the sale proceeds would be accounted and offered to tax as and when it was realised.

“3.2.) I have gone through the facts of the case and the submissions of the appellant. The contention of the appellant that did its income was highly uncertain is not accepted for the following reasons: “The CEC was allowed to sell the stock on behalf of the assessee and to read in the sale proceeds on account of the assessee/leaseholder and the CEC was authorised to deduct the assessee is compensatory and penal liabilities out of such sale proceeds and to return the balance proceeds to the assessee. The CEC is/Monitoring Committee is holding the sale proceeds of the iron ores of the leaseholders. In case, the money held by the CEC/Monitoring Committee on the account of any leaseholder is sufficient to cover the payments under the 3 heads, the lease holder may, in writing, authorise the CEC to deduct from the sale proceeds on its account the amounts under the aforesaid 3 heads and an undertaking to make payment of any additional amount as compensatory payment. On submission of such authorisation and undertaking, the CEC shall retain the amounts covering the aforesaid 3

heads and pay to the concerned leaseholder the balance amount, if any. It is expected that the balance amount, after making the adjustment as indicated here, would be paid to the concerned leaseholder is within one month from the date of submission of the authorisation and the undertaking. In the case of any leaseholder, if the money held on this account is not sufficient to cover the aforesaid 3 heads, he must pay the deficit within 2 months from today". Thus, as could be seen from the above, no where there is either suspense or uncertainty of receipt of sale proceeds of the said E-auctioned Iron Ore from the Monitoring Committee. As the assessee was maintaining mercantile system of accounting, it is bound to offer the same in the year of a curable. As the same has not been done, the AO was right in making the addition. This ground is thus dismissed."

Aggrieved by order of Ld.CIT(A), assessee is in appeal before us now.

6.8. Ld.Counsel before us placed his arguments under 2 categories:

- A. Recognition of sale proceeds from declared stock, received by assessee in subsequent assessment years; and
- B. Addition of sale proceeds of undeclared stock in the hands of assessee, which was not disbursed by MC.

A. Recognition of sale proceeds from declared stock received by assessee

Ld.Counsel impugned sale proceeds from sale of declared stock were accounted by assessee in subsequent assessment years, when it was received. He submitted that, Hon'ble Supreme Court in case of Samaj Parivartana Samudaya vs State of Karnataka, (supra) authorised MC to take control of stock, and sell the same through E-auction, depending on demand in the market. Subsequently, sale proceeds received by MC are to be deposited in nationalised bank account, after adjusting towards royalty, taxes and expenditure. Ld.Counsel submitted that, in instant case, right and control over stock was with MC, and till such time MC parts with sale proceeds, assessee had no right to receive the same. He submitted that, sale of stock by MC cannot be regarded

as sale of stock by assessee. He submitted that assessee thus accounted the sale proceeds from declared stock in subsequent assessment year, when it was actually received.

A.1. Ld.Counsel submitted that, though assessee followed mercantile system of accounting, revenue on sale proceeds of stock by MC, could be recognised and assessed to tax only on actual receipt, as assessee did not possess right to receive such income during the year under consideration. He submitted that, MC could not be considered as agent of assessee as there was no agreement between assessee and MC, for principle agent relationship to exist. Ld.Counsel submitted that, MC was acting in accordance with direction of Hon'ble Supreme Court vis-à-vis assessee. He also submitted that, assessee had not appointed MC to act on its behalf in order to constitute an 'Agent' under section 182 of Indian Contract Act, 1872. He thus submitted that, it is settled rule that, contract is not assignable without consent of both parties thereto, where, personal acts and qualities of one of the parties, form material and ingredient part of the contract.

A.2. Ld.Counsel argued that, revenue from declared stock was not recognised during the year under consideration due to existence of uncertainty in realisation of said amount. It has been submitted that, Section 5 of the Act, manifests that, an income can be said to have accrued, only when a person has legal right to receive such income, and its recognition is on such accrual, which is tempered by section 145 read with AS-9 of ICAI. Ld.Counsel submitted that, in order to charge an income to tax, it is necessary that such income should fall within the scope of total income, as defined under section 2(45) of the Act, and that, such income shall be charged to tax under section 5, if such income shall be received or deemed to have been received or accrue or arises or deemed to accrue or arise to a person in India, during the previous year. Ld.Counsel, thus submitted that, assessee had not derived any legal right to receive sale proceeds during previous year relevant to assessment year under consideration, and therefore, the sale proceeds cannot be construed as income in the hands of assessee for year under consideration.

A.3. Ld.Counsel submitted that, to constitute an 'income', assessee should have absolute command, control and right of disposition of such receipts. He submitted that, in the present

facts of the case, assessee has no control over the stock and sale proceeds, as sale was carried out by MC through E auction. He submitted that, revenue from sale of declared stock therefore was uncertain.

A.4. Ld.Counsel thus contended that, assessee had not acquire any right to receive income, in as much as, such right was dependent on MC disbursing such payments. He thus submitted that, sale proceeds therefore, had not received, or even deemed to have been received or accrued or arisen, or deemed to have arisen to assessee. It has been contended by Ld.Counsel that, necessary requirement under Section 5 of the Act, stands unsatisfied for recognising sale proceeds during year under consideration.

A.5. In support of his contentions he placed reliance upon following decisions:

- ED.Sasoon & CO Ltd vs CIT reported in (1954) 26 ITR 27 (SC)
- CIT vs Balbir Singh Maini reported in (2017) 398 ITR 531 (SC)
- CIT vs Excel industries Ltd reported in (2013) 358 ITR 295
- Prakashan leasing Ltd vs DCIT reported in (2012) 208 Taxmann 464 (Kar)

A.6. Ld.Counsel also relied on CBDT Notification No.9949 (F.NO.132/7/95-TPL)/SO 69(E), Dated 25/01/1996, superseded by Notification No.32/2015 (F.N.134/48/ 2010-TPL)/SO 892 (E), Dated 31/03/2015, regarding AS-I, relating to disclosure of accounting policies. A.7. Ld.Counsel submitted that, disclosure standards applicable for computation of income chargeable to tax are to be considered for recognition of revenue, arising during relevant year. He submitted that, as per disclosure standards, revenue shall be recognised when there is reasonable uncertainty of its ultimate collection. Referring to AS 9, Ld.Counsel submitted that, recognition of revenue requires that it is measurable, and that at the time of sale or rendering of services, it

would not be unreasonable to expect ultimate collection. He relied on AS-9, paragraph 9.1 and 9.2, where ability to assess ultimate collection with reasonable uncertainty is lacking at the time of raising any claim. He thus submitted that revenue recognition is to be postponed to the extent of uncertainty involved. In such circumstances, it was appropriate to recognise such revenue, only when it is reasonably certain that ultimate collection will be made. He referred to decision of Hon'ble Supreme Court in case of CIT vs Woodward Governor India Pvt.Ltd., reported in (2009) 312 ITR 254, wherein, Hon'ble Court held that, profits and gains of previous year are required to be computed in accordance with relevant accounting standard. Referring to decision of Hon'ble Supreme Court in case of JK industries Ltd vs UOI, reported in (2008) 297 ITR 176, Ld.Counsel submitted that, rules by which inventories are to be valued are laid down in accounting standards , and are to be followed in determination of accounting income mandatorily. He submitted that Hon'ble Court also held that;

“8. Finally, adoption of accounting standards and of accounting income as ‘taxable income’ would avoid distortion of accounting income which is the real income.”
A.8. He thus submitted that it is therefore appropriate to recognise revenue only when there is a reasonable certainty, that, ultimate realisation will be made. Ld.Counsel submitted that, there is no denial by authorities below that sale proceeds were received by assessee in subsequent financial years i.e; financial year 2013-14 to 2015-16, has been offered to tax by assessee. Ld.Counsel also submitted that, assessee received following amount in subsequent financial years which has been offered to tax as and when they were received:

Particulars	Amount	Offered to tax in FY
Payment advice dated 8/02/2014	13,60,77,524/-	2013-14
Payment advice dated 2/05/2014	22,48,13,763/-	2014-15
Release of 10% material value retained by the MC	2,50,81,553/-	2015-16
Total	38,59,72,840/-	

A.9. Ld.Counsel submitted that, entire amount of Rs.38,59,72,840/- includes Rs.25,59,99,429/-being sale proceeds from declared stock considered by Ld.AO as income of assessee for year under consideration. Taking support from assessment order, referring to para 4.1.b.,Ld.Counsel submitted that, Ld.AO himself records that, sum of Rs.25,59,99,429/- received in subsequent assessment years being assessment years 2014-15 and 2015-16, was offered to tax, during relevant assessment year. He submitted that having noted the fact that revenue received from declared stock has been offered to tax in subsequent years, making addition during the year under consideration would amount to double taxation in the hands of assessee. It has been submitted by Ld.Counsel that, right to receive sale proceeds, accrued to assessee by virtue of directions of Hon'ble Supreme Court by order dated 18/04/2013 (supra), which was in succeeding financial year, relevant to year under consideration, and has also been offered to tax on receipt basis. A.10. Alternatively, Ld.Counsel submitted that, entire exercise is revenue neutral as assessee is assessed at uniform rate of tax over the years.

A.10.1 Ld.Counsel submitted that, principle of matching between revenue receipt and expenditure to be incurred is to be applied. Reference was made to decision of Hon'ble Supreme Court in CIT vs. Bilahari Investment (P) Ltd. reported in (2008) 299 ITR 1, wherein referring to concept of matching Hon'ble Court observed that:

“82. Matching Concept is based on the accounting period concept. The paramount object of running a business is to earn profit. In order to ascertain the profit made by the business during a period, it is necessary that “revenues” of the period should be matched with the costs (expenses) of that period. In other words, income made by the business during a period can be measured only with the revenue earned during a period is compared with the expenditure incurred for earning that revenue. However, in cases of mergers and acquisitions, companies sometimes undertake to defer revenue expenditure over future years which brings in the concept of Deferred Tax Accounting. Therefore, today it cannot be said that the concept of accrual is limited to one year.

83. It is a principle of recognizing costs (expenses) against revenues or against the relevant time period in order to determine the periodic income. This principle is an important component of accrual basis of accounting. As stated above, the object of AS 22 is to reconcile the matching principle with the Fair Valuation Principles. It may be noted that recognition, measurement and disclosure of various items of income, expenses, assets and liabilities is done only by Accounting Standards and not by provisions of the Companies Act.”

A.10.2 Ld.Counsel submitted that, Ld.AO in subsequent year has not undone levy of tax of such sale proceeds. It was also been submitted that entire exercise is revenue neutral as applicable rate of tax remain the same in the relevant year and the subsequent years.

A.11. On the contrary, Ld.CIT.DR submitted that, assessee follows mercantile system of accounting. He submitted that as per mercantile system, income accrued to assessee in the year of sale. He submitted that right to receive sale proceeds, accrued to assessee by virtue of directions of Hon'ble Supreme Court in case of Samaj Parivartana Samudaya vs State of Karnataka, (supra), though subsequently received. He submitted that, amount to be disbursed by MC was ascertained during relevant year, being 80% of total sale proceeds. Ld.Counsel further submitted that, assessee claimed Rs.50,24,48,441/- as expenditure being total of declared and undeclared stock in IBM returns, which in any event assessee could not do, had the sale not taken place. He submitted that, sale of stock was effectuated during the year under consideration, and entire sale proceeds were received by MC during financial year relevant to assessment year under consideration. Ld.CIT.DR submitted that, assessee had given undertaking for deducting Royalty and other expenses payable to MC from such sale proceeds and the net amount that was payable to assessee by MC, which was very well ascertainable during financial year relevant to year under consideration. He thus submitted that, assessee was well within the knowledge of amount that accrued from sale of stock. Ld.CIT.DR thus submitted that, assessee was required to reflect these sales as trading receipts in the books of account in view of mercantile system consistently followed for disclosing income. Referring to

observations of Ld.AO in para 4.1.d to 4.1.f, Ld.CIT.DR submitted that, auction of declared stock took place during the year under consideration, and assessee had right to receive 80% of total sale proceeds as on the date of sale by virtue of directions of Hon'ble Supreme Court in case of Samaj Parivartana Samudaya vs State of Karnataka, (supra). Merely because MC disbursed payments in subsequent financial year, would not postpone revenue recognition in the hands of assessee to subsequent years. He vehemently opposed argument of Ld.Counsel that, income received by assessee was unascertainable and hypothetical. Ld.CIT.DR submitted that, accrual of income must be judged on 'Principle of real income theory', and that, what is necessary to be considered is the true nature of transaction. Ld.CIT.DR submitted that, what has really accrued to assessee has to be found out and what has accrued must be considered from the point of view of real income, taking the probability or improbability of realisation in a realistic manner. He also submitted that, merely because receipt takes place of such accrued income by conduct of parties in subsequent year, income which has accrued for year under consideration, cannot be made as 'no income'.

A.12. Ld.CIT.DR emphasised that, admittedly, in subsequent years, assessee received 80% of total sale proceeds from E auction carried out by MC. It has been contended that income has arisen/accrued to assessee during the year under consideration, and therefore has been rightly taxed in the hands of assessee for year under consideration.

A.13. We have perused submissions advanced by both sides in light of records placed before us. We also have perused various decisions relied upon by Ld.Counsel referred to herein above, as well as in the paper book filed before.

A.13.1. The issue that arises before us, is in respect of accrual of sale proceeds from declared stock, during the year under consideration. Following is the summary of what has been proposed by Ld.Counsel.

A.13.2. Ld.Counsel opposed for treatment of sale proceeds from disclosed stock as income in the hands of assessee for year under consideration on the ground that, it never had the 'right to

accrue', due to uncertainty of the amount. It was contended that in view of uncertainty, assessee need not account for the same even under mercantile system of accounting. It was submitted that sales revenue accrued to assessee only in the year in which payment advice was issued by MC.

A.13.3. Income tax is a levy on income. It takes into account the point of time at which liability to tax is attracted, i.e; accrual of income or its receipt. Hon'ble Supreme Court in case of CIT vs Shoorji Vallabhdas & Co reported in (1962) 46 ITR 144 held that:

“..... If income does not result at all, there cannot be a tax, even though in book keeping and entries made about a 'hypothetical income', which does not materialise. Where income has, in fact, been received and subsequently given up in such circumstances that it remains the income of the recipient, even though given up, the tax may be payable. Where, however the income can be said not to have resulted at all, there is obviously neither accrual nor receipt of the income, even though an entry to that effect might, in certain circumstances, have been made in the books of account.”

A.13.4. In CIT vs Kerala State Drugs & Pharmaceuticals Ltd., reported in (1991) 192 ITR 1, Hon'ble Kerala High Court observed and held as under:

“In order to tax on income, one has to see whether it is the real income or whether the income has materialised. What is necessary to be considered is the true nature of the transaction and whether in fact the transaction has resulted in profit or loss to the assessee. Once accrual takes place and income accrues, the same cannot be defeated. Even under the mercantile system of accounting, it is only the accrual of real income which is chargeable to tax. The income should not be hypothetical income, but real income. If income is given up unilaterally by the assessee after it had accrued, it could not escape liability to tax. When income is in fact received but subsequently given up it remains the income of the recipient and taxes payable. When income is not resulted at all, there is neither accrual nor receipt of income even if there is an entry to that effect in the books of account. Mere

postponing of an entry in the account books would not always supply conclusive evidence on the question whether the disputed amount has accrued to the assessee or not. Mere effort on the part of the assessee to realise the amount by sending a bill or making a claim or filing a suit for recovery would not in law make it an income which has accrued in the year in question. The transfer of the amount to the profit and loss account is bereft of any significance.”

A.13.5. We also refer to decision by Hon’ble Bombay High Court on concept of real income, emphasised in case of Kashiparekh and Co Ltd (HM) vs. CIT, reported in (1960) 39 ITR 706. Hon’ble Court held that, surrender of income even after closure of accounting year may make no difference to the concept of real income. Hon’ble Bombay High Court, relied on view expressed by Hon’ble Supreme Court in case of CIT vs Birla Gwalior (P) Ltd reported in (1973) 89 ITR 266 as under:

“The principle of real income is not to be subordinated as to amount virtually to a negation of it when a surrender or concession or rebate in respect of managing agency commission is made, agreed to or given on grounds of commercial expediency, simply because it takes place sometime after the close of an accounting year. In examining any transaction and situation of this nature the court would have more regard to the reality and speciality of the situation rather than the purely theoretical or doctrinaire aspect of it. It will lay greater emphasis on the business aspect of the matter viewed as a whole when that can be done without disk regarding statutory language.” From the above ratios laid down by Hon’ble Supreme Court and many High Courts, it could be construed that, accrual of income must be judged, depending facts and circumstances of each case.

A.13.6. It has been vehemently contended by Ld.Counsel that, assessee did not have right to accrue such income, since its receipt was hypothetical in the year of sale. And, though assessee followed mercantile system of accounting, it had to postponed its accrual to subsequent years, when sale proceed were actually received. It was submitted by assessee that, income did not materialise during the year under consideration. It was contended that in view of uncertainty, assessee need not account for the

same even under mercantile system of accounting. It was submitted that sales revenue accrued to assessee only in the year in which payment advice was issued by MC.

A.13.7. The present facts of the case, we note that, total sale proceeds as on the date of sale by virtue of directions of Hon'ble Supreme Court in case of Samaj Parivartana Samudaya vs State of Karnataka, (supra) approved sale of iron ore through e-auction conducted by MC. It is also observed that Hon'ble Court directed that, the quantity to be put for e-auction, its grade, lot sizes, its base/flow price and the period of delivery would be decided/provided by the respective leaseholders. It is also noted that, MC may permit the leaseholders to put up for e-auction the quantities of iron ore planned to be produced in subsequent months. Hence, we cannot agree that, assessee was unaware regarding total quantity of iron ore sold and total sale proceeds received towards total quantities sold during the year.

A.13.8. On perusal of documents placed on record, we are of the view that, assessee was aware of total quantity of iron ore sold and dispatched, total sale proceeds received towards total quantity sold during the year and value of stock that was not considered for release. This is evident from page 178, 180-181 of paper book, wherein, date of sale, for both mining leases and amount realised are placed. Under such circumstances, assessee cannot escape from incident of accrual of such income during financial year relevant to assessment year under consideration.

A.13.9. There is no dispute with regard to the fact that, declared stock belongs to assessee and assessee has to recognise revenue arising on sale of such stock. We have already noted that the role of MC was to carry out the e-auction of the stock and sell the stock on behalf of assessee as per the directions of total sale proceeds as on the date of sale by virtue of directions of Hon'ble Supreme Court in case of Samaj Parivartana Samudaya vs State of Karnataka, (supra). Therefore, the risk in such stock stood transferred from assessee to the buyer as on the date of sale. Further, assessee was vested with legal right to receive sale proceeds from stocks sold by MC. Therefore, income became due to assessee as on date of sale of stock, and it became due to assessee, when sale proceeds were received by MC. We also note that under VAT, the sales have been recognised for year under

consideration by assessee which further strengthens our view. In our opinion, under such circumstances, date of payment does not affect accrual of income.

A.13.10. In support, we refer to decision of Hon'ble Supreme Court in case of CIT vs Excel Industries Ltd (supra) . Hon'ble Court while deciding the case referred to its coordinate bench decision in case of Morvi Industries Ltd vs CIT reported in (1971) 82 ITR 835. It was observed that income can be said to accrue, the moment it becomes due. It was further held that date of payment does not affect the accrual of income. The moment income accrues, assessee gets vested with the right to claim it, even though it may not be made immediately. Hence, receipt of the sale consideration on a later date would not postpone the accrual of income. Under Sale of Goods Act, 1930, a key criterion for determining when to recognise revenue from a transaction involving the sale of goods is that the seller has transferred the property in the goods to the buyer for a consideration. The transfer of property in goods, in most cases, results in or coincides with the transfer of significant risks and rewards of ownership to the buyer. Also as per ICDS-IV relating to revenue recognition, sale is completed when property in the goods transferred from the buyer to the seller for a price and further the seller retains no effective control of the goods so transferred. In present facts, iron ore stood transferred to the buyers as on the date of sale through E auction by MC. We note that assessee was aware about the amount to be received as sale consideration and the details regarding deduction is towards SPV as per the directions of Hon'ble Supreme Court.

A.13.11. We therefore do not find any force in the submissions made by Ld.Counsel that there is no necessity to assess the impugned sale proceeds during the year since it has been already offered to tax in subsequent assessment year and the exercise is tax neutral. Under Income tax Act, total income of each year is to be determined separately and hence income has to be assessed in the right assessment year. Considering totality of facts in the present case, we are of the view that, sale proceeds of assessee's stock accrued to assessee during financial year relevant to assessment year under consideration. Based on above discussions and observations, in our view, we are of opinion that, sale

proceeds from disclosed stock accrued to assessee during the year under consideration and has to be considered for determining income under the head 'profits and gains from business for year under consideration.

We have already noted that assessee has offered the above sale consideration on subsequent assessment years, and income tax act does not permit to assess same income twice. Hence in our view assessee may move appropriate petition before the authorities below for exclusion of above sale proceeds from declared stock in the relevant assessment year. Ld.AO is directed to consider such application liberally by granting proper opportunity of being heard to assessee.”

9. In view of the above order of the Tribunal, it is very necessary to examine, whether the quantity of goods sold was identified on the date of e-auction, and whether sale proceeds to be received during the assessment year under consideration are quantified by the M.C. If these two ingredients were verifiable on the date of e-auction, then only the assessee is required to recognize the income as deemed income accrued in the assessment year under consideration. Otherwise, the assessee is not required to recognize income in the assessment year under consideration. The CIT(Appeals) has not examined these two ingredients. With these observations, we set aside the order of the CIT(Appeals) and remit the issue back to the file of the Assessing Officer to examine these two ingredients and decide the issue afresh in the light of the above order of the Tribunal.

10. In the result, the revenue's appeal is partly allowed for statistical purposes.

Pronounced in the open court on this 5th day of October, 2021.

Sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 5th October, 2021.

/Desai S Murthy /

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.