

आयकर अपीलिय अधिकरण "बी" न्यायपीठ पुणे में ।  
**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE**

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
 AND  
 SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER**

**आयकर अपील सं. / ITA No.134/PUN/2018  
 निर्धारण वर्ष / Assessment Year : 2013-14**

The Income Tax Officer,  
 Ward – 2, Jalna

.....अपीलार्थी / Appellant

**बनाम / V/s.**

M/s. Mauli Steel Pvt. Ltd.,  
 Plot No. C – 15, Addl. MIDC Area,  
 Jalna – 431203

PAN : AABCM6718R

.....प्रत्यर्थी / Respondent

Assessee by : N O N E  
 Revenue by : Shri Navin Gupta

सुनवाई की तारीख / Date of Hearing : 29-04-2022  
 घोषणा की तारीख / Date of Pronouncement : 26-05-2022

**आदेश / ORDER**

**PER S.S. VISWANETHRA RAVI, JM :**

This appeal by the Revenue against the order dated 07-11-2017 passed by the Commissioner of Income Tax (Appeals)-1, Aurangabad ['CIT(A)'] for assessment year 2013-14.

2. We find no representation on behalf of the assessee nor any application filed seeking adjournment. Thus, the assessee called absent

and set ex-parte. Therefore, we proceed to dispose of the appeal by hearing the ld. DR and considering the material available on record.

3. The Revenue raised two grounds of appeal amongst which the only issue emanates for our consideration is as to whether the CIT(A) is justified in deleting the addition of Rs.6,75,70,736/- made by the AO on account of suppressed production in the facts and circumstances of the case.

4. Heard ld. DR and perused the material available on record. We note that the CIT(A) has given relief by following the order of this Tribunal in assessee's own case for A.Ys. 2004-05 and 2009-10 wherein the ITAT deleted the addition made on account of estimation of estimation of gross profit on suppressed production. The CIT(A) discussed the same in detail in Page No. 4 at Para No. 5 of the impugned order. The ld. DR did not dispute the same. The detailed discussion made by the CIT(A) in Para No. 5 is reproduced here-in-below for ready reference :

“5. *I have duly considered the submissions of the appellant. It is noticed that similar additions on account of suppressed production on the basis of variation in the consumption of electricity units were made by the AO in AY 2004-05 and 2009-10 in this case. The appeals had been allowed in the favour of the assessee for these year by the Hon'ble ITAT, Pune vide its order ITA No. 1432 & 1433/PN/2012 and 1632 & 1633/PN/2012 dated 15.07.2015. The Hon'ble ITAT Pune had also allowed relief to the appellant against the order of CIT(Appeals) on account of estimation of GP on suppressed production. The Tribunal followed its own decision in the case of SRJ Peety Steel Pvt. Ltd. (137 TTJ 627) for AY 2000-01 to AY 2006-07. The unexplained investment/working capital requirement in unaccounted purchases which stood deleted by the order of CIT (Appeals) was also not sustained by the Hon'ble Tribunal. There is no change in the facts and circumstances of the assessment year under reference as compared to AY 2004-05 & AY 2009-10. Similar additions were made in the case of assessee firm for AY 2006-07 to AY 2008-09 and the Hon'ble ITAT Pune, vide its order ITA Nos.224 to 226/PN/2012 dated 05.08.2015 has allowed the appeal in favour of the assessee. In the case of SRJ Peety Steel Pvt. Ltd. (133 TTJ 627), one of the reasons for rejecting the books of account by the AO was inconsistent electricity*

consumption. In this regard, the stand of the assessee company was that the AO had simply taken the lowest electricity consumption for a month in the whole year and treated the production in that month as the correct production and then proceeded to arrive at the production figure by multiplying the production in the books by the ratio of production to the electricity consumption for the month in which electricity consumption was minimum. However the method of computing the so-called suppressed production was not based on cogent reasons. The AO had gone by supposition but not by actual detection which was not justified. The entire method in this regard was based on pre-supposition and lacked scientific basis. The AO had failed to examine the entire manufacturing process carried out by the assessee company. He had not gone into the quality of raw materials, nor had he bothered to take the type of technology used by the assessee company. The AO had also not taken strength from comparable case of similarly placed situation. The factors responsible for variation in electricity consumption had been explained by the assessee company in his detailed written submissions dated 22nd October, 2007 wherein it was emphasized that improper supply by MSEB, which deficated the melting efficiency, lower the voltage supply level, higher the consumption of electricity. Notably, voltage supply varied on a daily basis which would at once be clear if some comparable cases had been studied by the AO before jumping to the conclusion. Reheating of the material due to the interruptions in supply, when the heat was in process and there was an interruption in supply, the raw material had to be heated again using electricity though the same was used earlier, without giving the final product. Notably supply was notoriously erratic in a place like Jalna, which would at once have been clear if some comparable cases had been studied by the AO before jumping to hypotheses and conclusions. Reheating of the material due to the breakdown in equipment or machinery was also quite usual in a manufacturing process. To manufacture the final product, number of machines had to be used and unexpected breakdown of any one machine consumed electricity again. The AO rejected the submissions by saying that there would be equal probability of the above factors in every month. This was difficult to understand. Had the AO gone into the reasonableness of the explanation and technical details adduced by the assessee instead of merely evaluating the technical issues in a casual and isolated manner with a cursory look into monthly electricity consumption without any support from other comparable cases, his conclusions would have been significantly different, The AO had himself agreed that there might be factors outside the control of assessee which might affect electricity consumption. However, he made an allowance of 10 per cent over and above the lowest monthly consumption in the year. The basis of allowing this over the lowest monthly consumption in the year was not scientific and therefore arbitrary. Further, even the basis of arriving at this 10 per cent had not been spelt out by the AO. It was argued that no fixed parameters and statistical formula on the basis of burning loss and electricity consumption, in isolation, could be applied for working out suppressed production, that too, in total disregard of the books of

*accounts which, in the facts of the case, did not warrant rejection. It was held by Hon'ble ITAT, Pune that having rejected the books of accounts of the assessee company for all the years under consideration, the AO devised a statistical formula on the basis of electricity consumption that was applied uniformly in order to work out certain production and resultant concealed income for each year under consideration. The AO could not substitute the same by cogent reasoning. He had simply taken the lowest electricity consumption for a month in the whole year and treated the production in that month as the correct production and then proceeded to arrive at his production figure by multiplying the production in the books by the ratio of production to the electricity consumption for the month in which electricity consumption was minimum. The method of computing the so-called suppressed production was not justified in absence of sound basis for same. The consumption of the electricity for the manufacturing of mild steel ingots/billets depended on various factors. like quality of raw material which was the major input, voltage of the supply, power interruptions, mechanical and electrical breakdowns and the chemical composition of the liquid metal which had to be finally cast into ingots/billets. The AO failed to appreciate these facts and did not attempt to establish a direct nexus between the production and electricity consumed for the manufacture of round/TMT bars and arrived at a conclusion that there was an excess consumption of electricity resulting in suppressed production and alleging that the assessee company had indulged in unaccounted production. It was finally held that each year of the assessment was independent and evidences found relating to assessment year 2006-07 could not have an adverse impact on the assessments of the assessee company from the assessment years 2000-01 to 2005-06. Therefore, rejection of books for these years purely on the ground that there had been divergence in the consumption of electricity and application of section 144 was not at all justified. Accordingly the impugned additions were deleted.”*

5. In the light of the above, we note that the CIT(A) by following the order of this Tribunal in assessee's own case vide order dated 15-07-2015 passed in ITA Nos.1432 & 1433/PN/2012 and 1632 & 1633/PN/2012 held the addition made on account of estimation of gross profit on suppressed production is not maintainable. In order to come to such conclusion the Tribunal followed its own order in the case of SRJ Peety Steel Pvt. Ltd. reported in 137 TTJ 627 for A.Y. 2000-01 to AY 2006-07. The ld. DR did not bring on record any order contrary to the order passed by this Tribunal

in assessee's own case. Following the order of this Tribunal in assessee's own case, we, therefore, dismiss the grounds raised by the Revenue.

6. In the result, the appeal of Revenue is dismissed.

Order pronounced in the open court on 26<sup>th</sup> May, 2022.

Sd/-  
(Inturi Rama Rao)  
ACCOUNTANT MEMBER

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 26<sup>th</sup> May, 2022.

रवि

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Aurangabad
4. The Pr. CIT-1, Aurangabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune