



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND ARUN KHODPIA, ACCOUNTANT MEMBER**

ITA No.220/CTK/2013
Assessment Year : 2008-2009

Dy. Commissioner of Income Tax, Circle-1(2), Bhubaneswar.	Vs.	M/s. Starlight Iron Pvt Ltd., R.BNo.F-2, Metro Classic Building, Plot No.352, Saheed Nagar, Bhubaneswar
PAN/GIR No.AAACK 4497 Q		
(Appellant)	..	(Respondent)

C.O.No.43/CTK/2013: Asst.Year: 2008-09
(in ITA No.220/CTK/2013)

C.O. No.44/CTK/2013: Asst. Year: 2009-2010
(in ITA No.221/CTK/2013)

ITA Nos.33 & 34/CTK/2014
Asst. Years: 2008-09 & 2009-10

M/s. Starlight Iron Pvt Ltd., R.BNo.F-2, Metro Classic Building, Plot No.352, Saheed Nagar, Bhubaneswar.	Vs.	Dy. Commissioner of Income Tax, Circle-1(2), Bhubaneswar.
PAN/GIR No.AAACK 4497 Q		
(Appellant)	..	(Respondent)

Assessee by : Shri Sunil Mishra, AR
Revenue by : Shri M.K.Gautam, CIT DR

Date of Hearing : 02 /11/2022
Date of Pronouncement : 02/11/2022

ORDER

Per Bench

ITA No.220/CTK/2013 is filed by the revenue against the order of the Id CIT(A)-1, Bhubaneswar dated 30.1.2013 in Appeal No.0239/10-11 for the assessment year 2008-09. The assessee has also filed cross objections in Revenue's appeals in ITA No.220/CTK/2013 for the assessment year 2008-09 and in ITA No.221/CTK/2013 for the assessment year 2009-10.

2. Shri M.K.Gautam, Id CIT DR appeared for the revenue and Shri Sunil Mishra, Id AR appeared for the assessee.

3. It was submitted by Id CIT DR that the assessee is a company engaged in manufacture of M.S.Ingot. There was a search on the assessee on 28.5.2008. As a consequence to the search, various documents had been found and seized. Copies of the documents have been provided to the assessee on 11.7.2008. Notice u/s.153A came to be issued on the assessee on 6.5.2010 and was served on 7.5.2010. No returns of income were filed by the assessee in response to the notice u/s.153A. It was also the submission that the assessee had not cooperated in the assessment proceedings and the assessment came to be completed u/s.144 of the Act. It was the submission that in the course of assessment, on the basis of documents marked as DB-06, the Assessing Officer had drawn the conclusion of suppression of sales. The Assessing Officer consequently obtained the details of the accounts from the Registrar of Companies (ROC) filed by the assessee and had adopted the turnover in respect of quantity of

M.S.Ingots manufactured by the assessee from the said accounts obtained from the ROC. The Assessing Officer had then adopted the average sale price of M.S.Ingots from National Commodity & Derivatives Exchange Limited (**NCDEX**). It was the submission that on the basis of average sale price as determined from NCDEX, the Assessing Officer had multiplied the quantity of sales and had determined the turnover. From the said determined turnover, the Assessing Officer had granted the assessee the deduction of the expenses as claimed by the assessee in its Profit and loss account as filed before the ROC and the difference was brought to tax alongwith other incomes as shown by the assessee in its regular return of income. It was the submission that the Id CIT(A) in para 3.2 of his order took into consideration 44AB report as filed by the assessee and discarded the documents relied upon by the AO being DB-06. It was the submission that when the Id CIT(A) considered the audit report u/s.44AB, he has violated the principles laid down in respect of provisions of Rule 46A.

4. At this point, Id AR submitted that the Id CIT(A) has called for two remand reports and after considering the remand reports, deleted the addition.

5. It was the submission by Id CIT DR that the Id CIT(A) had discarded the impugned document DB-06 on the ground that the said documents were impounded in the case of Debabrata Behera, who was also covered under search and survey in respect of related party thereto being M/s.

Seerajuddin & Co. It was the submission that the Id CIT(A) took an erroneous stand that the said documents did not relate to the assessee. At this point, it was asked to Id CIT DR, as to how the documents seized in the case of Debabrata Behera being the impugned documents DB-06 could be used in the case of the assessee for the purpose of alleging suppression of sales. It was put to Id CIT DR that if the said document was to be used then the provisions of section 153C would have to be considered. If it was found in the course of survey on Debabrata Behera, the same could have been used for reopening of assessment u/s.148 of the Act. In any case, it cannot be used in an assessment u/s.153A in the case of the assessee especially when there is no satisfaction recorded linking the said documents to the assessee.

6. In reply, Id CIT DR submitted that any documents are found in the course of related searches, even if the search is illegal or the document is illegally obtained, can be used as evidence in the course of assessment. It was the submission by Id CIT DR that just because the satisfaction has not been recorded, evidence should not be discarded as it will lead to substantial injustice. It was his further submission that the impounded documents can be used in the assessment of third party in 153A assessment. It was the prayer that the order of the Id CIT(A) is liable to be reversed and that of the AO restored.

7. In reply, Id AR submitted that the Id CIT(A) has called for two remand reports and additions have been deleted only after considering the said remand reports. It was the submission that in the even, in the remand report, it has been admitted by the AO that DB-06 are the documents impounded in the case of Debabrata Behera. It was the submission that at the outset, such evidence cannot be used against the assessee without recording the satisfaction in the case of Debabrata Behera. It was the further submission that DB-06 did not contain the name of the assessee and was in no way connected to the assessee and even in the remand report, the Assessing Officer was unable to show how the said documents impounded as DB-06 was in any way having any link with the assessee. He vehemently supported the order of the Id CIT(A). It was his prayer that the assessment itself should be quashed.

8. We have considered the rival submissions. At the outset, it remains the admitted fact that DB-06 relates to the documents impounded in the course of search on Debabrata Behera. In documents found in the course of searched person is found to relate to any person other than the searched person, there is compulsory requirement under the law to record satisfaction in the file of the searched person by the AO of the searched person. Clearly, no satisfaction has been recorded in the case of Debabrata Behera to show that the said impounded document DB-06 or any part thereof relate to the assessee herein. This being so, on this ground alone,

we are of the view that said evidence cannot be used against the assessee. If DB-06 is removed, then the very foundation of the AO for raising the allegation of suppression of sales would also go. This being so, in the absence of valid recording of satisfaction, for the purpose of using DB-06, the assessment as done in the case of the assessee stands quashed.

9. Further, the assessment is made herein u/s.153A. If the evidence in the form DB-06 impounded in the course of search of Debabrata Behera is to be considered, then obviously, the assessment could not have been done u/s 153A of the Act, but u/s.153C even that has not been done in the present case. Consequently, even on this ground also, the present assessment is invalid and same is quashed.

10. In regard to cross objection No.44/CTK/2013, it is found that the revenue's appeal in ITA No.221/CTK/2013 has already been disposed on account of tax effect. Consequently, the technical ground of satisfaction raised in the cross objection only survive and our findings for the assessment year 2008-09 applies to the assessment year 2009-10.

11. In the result, appeal of the revenue is dismissed and cross objections filed by the assessee stand allowed.

ITA No.33 & 34/CTK/2014: Asst. year 2008—09 & 2009-10

12. These are appeals filed by the assessee against the order of the Id CIT(A)-1, Bhubaneswar confirming the levy of penalty u/s.271(1)(b) of the Act for the assessment year 2008-09 & 2009-10.

13. It was submitted by Id AR that as the assessment for the assessment years 2008-09 & 2009-10 have been quashed, the penalty is liable to be deleted.

14. In reply, Id CIT DR submitted that the penalty is levied for non-compliance of statutory notice by the assessee and on account of non-cooperation at the assessment stage, and the assessment had been done exparte. It was his prayer that the penalty should be confirmed.

15. We have considered the rival submissions. As we have already quashed the assessment for the assessment year 2008-09 and allowed the cross objections for both the assessment years, the penalty levied u/s.271(1)(b) for both the assessment year will no more survive as the very foundation for levy of penalty has got annulled. In the circumstances, the penalty levied by the AO and confirmed by the Id CIT(A) stands deleted for both the assessment years.

16. In the result, both the appeals of the assessee stand allowed.

Order dictated and pronounced in the open court on 2/11/2022.

Sd/-
(Arun Khodpia)
ACCOUNTANT MEMBER

sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 2/11/2022
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The ASSESSEE; M/s. Starlight Iron Pvt Ltd.,
R.BNo.F-2, Metro Classic Building, Plot
No.352, Saheed Nagar, Bhubaneswar
2. The Revenue; Dy. Commissioner of Income
Tax, Circle-1(2), Bhubaneswar
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT-1, Bhubaneswar.
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack