



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

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

ITA No.187/CTK/2019

Assessment Year : 2014-15

M/s. M.G.Mohanty, 5-A, Forest Park, Bhubaneswar.	Vs.	Pr. CIT-1, Bhubaneswar.
PAN/GIR No.AAFFM 2127 H		
(Appellant)	..	(Respondent)

Assessee by : Shri B.K.Mohapatra/A.K.Sambat, CAS
Revenue by : Shri M.K.Gautam, CIT DR

Date of Hearing : 30/1/2023

Date of Pronouncement : 30/1/2023

ORDER

Per Bench

This is an appeal filed by the assessee against the order of the Id Pr. CIT-1, Bhubaneswar u/s.263 of the Act dated 31st March, 2019 in Appeal No.PCIT-1/BBSR/263/05/2018-19 for the assessment year 2014-15.

2. S/Shri B.K.Mohapatra/A.K.Sabat, Id ARs appeared for the assessee and Shri M.K.Gautam, Id CIT DR appeared for the revenue.

3. It was the submission that the issue involved in this appeal was against the action of the Pr. CIT-1, Bhubaneswar in directing the Assessing Officer to rework out the valuation of closing stock by applying the sale price as against the price disclosed in Form No.H1 provided by the

assessee. It was the submission that there is no variation in the stock but in regard to variation there has been no direction for adjustment of the opening stock for the relevant assessment year. It was also the submission that the tax rate being the same, this is only shifting income from the subsequent year to the relevant assessment year. It was the submission that the issue was squarely covered by the decision of the Co-ordinate Bench of this Tribunal in assessee's own case for the assessment year 2015-16 in ITA No.142/CTK/2021 order dated 14.12.2022, wherein, the Co-ordinate Bench has held as follows:

"6. We have considered the rival submissions. A perusal of the order of the Pr. CIT passed u/s.263 clearly shows that he is attempting to tinker with the closing stock. If the closing stock is to be tinkered with then obviously, similar adjustment to the opening stock must also be done. Further, tinkering of closing stock would affect the opening stock of the next year. This in effect would be practically revenue neutral insofar as it actually shifts the income from one year to another year. The tax rates in respect of the of relevant assessment year involved have not been varied by the Finance Act. This being so, in view of the proposition laid down by Hon'ble Hon'ble Supreme Court in the case of Excel Industries Ltd. reported in 358 ITR 295 (SC) wherein it has been held that an exercise which only results in change in income in various years but is overall tax neutral need not be pursued. In the present case, as the adjustment in effect is revenue neutral, the revision as proposed by the Pr. CIT is unsustainable.

7. Further, as there has been no adjustment to the opening stock of the relevant assessment year also, the proposal by the Pr. CIT itself is unsustainable. There is also no variation in the quantity of closing stock as disclosed in the Form H-1 & and the audited accounts of the assessee insofar as this is also not the averment of the Id Pr. CIT. We are further live to the issue that as the Id CIT DR

has submitted that the Assessing Officer has only called for the details but has not done any investigation. It is the duty of the assessee to submit details as called for by the Assessing Officer. It is not the duty of the assessee to point out that there are omissions, if any, in its account. It is the duty of the AO who has to draw conclusion and it is not for the assessee to lead the Assessing Officer to draw conclusion. Nothing has been brought out by the Id CIT DR to show that the Assessing officer has not done any enquiry. The fact that he has called for the details and he has collected the details himself would show that the Assessing officer has applied his mind to the issue. This being so, on this ground also, the order of the Pr. CIT is unsustainable and consequently, stands quashed.”

4. It was the submission that the order passed u/s.263 is liable to be quashed.

5. In reply, Id CIT DR vehemently supported the order of the Pr. CIT. It was the submission that on identical circumstances in the case of M/s. Kalinga Mining Corporation Pvt Ltd. Vs. Pr. CIT in ITA No.168/CTK/2019 for the assessment year 2014-15 order dated 28.1.2020, the Co-ordinate Bench of this Tribunal upheld the revision as done by the Pr. CIT. He drew our attention to para 14 of the order, which is extracted as follows:

“14. Let us examine the facts of the assessee’s case so as to ascertain whether the A.O. has made the requisite enquiries. It is undisputed that during the accounting year relevant to assessment year under consideration, the assessee has credited Rs.167,58,34,770/- under the head “revenue from operations (gross)’ i.e. (gross sale of Rs.196,76,82,602 – less royalty of Rs.29,18,47,831). The Id Pr. CIT gathered from Form H1 prescribed to Indian Bureau of Mines that the assessee had effected total sale of 940,788.270 (MT) of iron ore for a sum of Rs.202,42,11,422/- and as such gross revenue from operation has been worked out to Rs.173,23,63,591 i.e. (gross sale of Rs.202,42,11,422 – less royalty of Rs.29,18,47,831). The above discrepancies were not pointed out by the Assessing Officer at the time of assessment proceedings. However, the Pr. CIT after making proper enquiry pointed out that that the assessee company had understated its revenue from operations to the extent of Rs.5,65,28,821 (Rs.173,23,63,591 – Rs.167,58,34,770/-). We, therefore, are

in agreement with the learned Pr. Commissioner of Income tax that the assessment order was erroneous in so far as it was prejudicial to the interests of revenue. Accordingly, we decline to interfere with the order of learned Commissioner passed under section 263 of the Act.”

6. It was the submission that as the issue has already been held in favour of the Revenue, the order u/s.263 passed by the Pr. CIT is liable to be upheld.

7. In reply, Id AR drew our attention to para 4 of the order in the case of Kalinga Mining Corporation Pvt Ltd (supra). It was the submission that in the said case, there was variation in the quantity of closing stock as per Form H-1 and as per the books of account and this has led to upholding the order of the Pr. CIT u/s 263 of the Act. It was the submission that in assessee’s case, no variation in the closing stock has been noticed or recorded. It was the submission that the decision of the Co-ordinate Bench in assessee’s own case for the immediately succeeding assessment year is liable to be followed.

8. We have considered the rival submission. A perusal of the facts in the case of Kalinga Mining Corporation Pvt Ltd., (supra), which has been extracted as para 14 clearly shows that the Co-ordinate Bench was carried by the fact that there was variation in the quantity of the closing stock as per Form H-1 and as per the books. Admittedly, when there is variation in the quantity, it leaves room for investigation. In the assessee’s case, there is no variation in the quantity and it is only the variation that has to be attempted to be tinkered with the identical adjustment not being done to

the opening stock in the relevant assessment year. This in effect cannot be done unless the provisions of section 145 has also been invoked. The consistent method of accounting followed should normally be tinkered with unless the method shows suppression/evasion. This being so, respectfully following the decision of the Co-ordinate of this Tribunal in assessee's own case in the immediately succeeding assessment year referred (supra) , the order passed u/s.263 by the Pr. CIT stands quashed.

9. In the result, appeal filed by the assessee stands allowed.

Order dictated and pronounced in the open court on 30/1/2023.

Sd/-
(Arun Khodpia)
ACCOUNTANT MEMBER

sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 30/1/2023
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : M/s. M.G.Mohanty, 5-A,
Forest Park, Bhubaneswar
2. The Respondent: Pr. CIT-1, Bhubaneswar
3. The CIT(A)—1, Bhubaneswar
4. DR, ITAT, Cuttack
5. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack