



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

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

ITA No.110/CTK/2022

Assessment Year : 2020-2021

M/s. Bajrangbali Re-rollers Pvt Ltd., Lal Building, Kachery Road, Rourkela.	Vs.	ACIT, Central Circle, Sambalpur
PAN/GIR No.AACCB 6678 A		
(Appellant)	..	(Respondent)

Assessee by : Shri S.K.Tulsiyan, Ms Nisha Rachh and B.K.Tibrewal,
ARs

Revenue by : Shri M.K.Gautam, Pr. CIT (OSD)

Date of Hearing : 28 /03/2023

Date of Pronouncement : 28 /03/2023

ORDER

Per Bench

This is an appeal filed by the assessee against the order of the Id
CIT(A)-2, Bhubaneswar dated 9.4.2022 in Appeal No.2/10404-2019-20
for the assessment year 2020-2021.

2. Shri S.K.Tulsiyan, Ms Nisha Rachh and B.K.Tibrewal, ARs appeared
for the assessee and Shri M.K.Gautam, Pr. CIT (OSD) appeared for the
revenue.

3. It was submitted by Id AR that there are two issues involved in the present appeal, first being against the action of the Id CIT(A) in confirming the addition in respect of loan creditors being Arnav Financial Services Pvt Ltd. It was the submission that this issue has already been considered in the assessment year 2020-2021 in the case of Bajrangbali Steel Industries Pvt Ltd., in ITA No.109/CTK/2022 and same arguments would apply herein also.

4. Ld Pr. CIT(OSD) has reiterated his arguments as made in the case of Bajrangbali Steel Industries Pvt Ltd., in ITA No.109/CTK/2022.

5. As we have already deleted the addition accepting the genuineness of the transaction of the assessee with Arnav Financial Services Pvt Ltd., in the case of Bajrangbali Steel Industries Pvt Ltd., in ITA No.109/CTK/2022 of even date, on similar findings, the addition as made by the AO and confirmed by the Id CIT(A) stands deleted.

6. In respect of second issue being the addition representing excess stock found in the course of search, it was submitted by Id AR that during the course of search, eye estimation of the stock i.e MS bar, MS Angle, MS channel, MS Flat, MS Round and miscellaneous had been made at 6824.994 MTs. It was the submission that the actual stock as per the books was recorded in the order of the Id CIT(A) at page 22 of his order, which is in reply to Question No.30 recorded from Accountant of the assessee. It was

the submission that the alleged excess stock as mentioned at page 22 of the order of the Id CIT(A), same questionnaire in respect of Q. No.32, the excess stock has also been put to question. It was the submission that the statement of the Director Shri Amit Kumar Agarwal was recorded on 23.2.2020 and the employee being Pradeep Kumar Pradhan, who was the person responsible for maintenance of stock and who was also the accountant had categorically denied the excess stock and they have vehemently opposed the eye estimation of the closing stock. It was the submission that in the absence of any evidence of any excess closing stock having been found in the course of search, no addition is liable to be made. It was the submission that the Id CIT(A) in page 28 of his order has admitted that there might be an element of truth in the contention of measurement of stock by eye estimation. It was the submission that the Id CIT(A) took the view that the issue of non-availability of physical examination of the stock was raised for the first time before the Id CIT(A) and he has consequently denied accepting the same. It was the submission that the statement recorded from the Director Shri Amit Kumar Agarwal is on 23.2.2020 and the search was conducted on 20.2.2020. As early as on 23.2.2020, the valuation of closing stock by eye estimation has been challenged and denied by both the Director and employee regarding maintenance of stock statement. It was the submission that when the assessee has categorically denied the estimation of stock as made by the

Investigation Wing, it was very much open to the Investigation Wing to do physical verification of the stock, which was not even attempted. It was the submission that in the absence of physical verification of the stock, eye estimation should not be accepted. It was the further submission that steel is a product which is liable for GST and VAT, these are items which cannot be stocked without proper accounting. It was the submission that the authorities for the relevant assessment year in the case of the assessee have not disturbed the purchases or sales. There is no claim of bogus purchases and sales in the relevant assessment year. It was the submission that in the absence of such corroborative evidence, no addition was called for.

7. In reply, Id Pr. CIT(OSD) vehemently supported the order of the Id CIT(A) and the AO. It was the submission that the assessee should have compelled the Investigation Wing to do physical verification of the stock when they were refuting the eye estimation.

8. We have considered the rival submissions. It is an admitted fact that the stock has been verified by eye estimation. The statement of Director Shri Amit Kumar Agarwal has been recorded by the Investigation Wing itself shows that it was very much available to the Investigation Wing that this stock statement has been challenged and is under challenge. Peculiarity in the case is that there is no disclosure in the present case. The Investigation Wing has got no statement recorded from the Director of the assessee

company accepting any undisclosed income much less probable undisclosed stock. The items dealt with by the assessee admittedly are excisable commodity and GST is also leviable. In the relevant assessment year, there is no allegation of undisclosed purchases or undisclosed sales. The books of account of the assessee for the relevant assessment year have also not been disturbed. It is an admitted fact that eye estimation of physical stock is not permissible much less a scientific method for valuation of physical stock. It was very much available to the investigation wing to do weightage of the physical stock which was the right method to prove excess stock availability. This has admittedly not been done by the Revenue. As Ld CIT(A) has accepted that there is some truth, but has been carried away by the presumption that the claim of eye estimation is being made before the appellate authority for the first time. This is wrong. It is on mistaken presumption that the Id CIT(A) has relied on various case laws to confirm the addition. When the basic presumption in respect of valuation of the stock available at the time of search itself has become erroneous in the findings of the Id CIT(A), consequently, the findings on this issue has also become erroneous. This being so, the findings of the Id CIT(A) on this issue stands reversed and the addition as made by the AO and confirmed by the Id CIT(A) in respect of alleged excess stock found in the course of search stands deleted.

9. In the result, appeal of the assessee stands allowed.

Order dictated and pronounced in the open court on 28/03/2023.

Sd/-
(Arun Khodpia)
ACCOUNTANT MEMBER

sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 28/03/2023
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The appellant: M/s. Bajrangbali Re-rollers Pvt Ltd., Lal Building, Kachery Road, Rourkela.
2. The respondent :ACIT, Central Circle, Sambalpur
3. The CIT(A)-2, Bhubaneswar
4. Pr.CIT-2, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack