

आयकर अपीलीय अधिकरण
मुंबई पीठ "एच", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री एस. रिफौर रहमान, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI S.RIFAUH RAHMAN, ACCOUNTANT MEMBER

आअसं. 3553/मुं/2016 (नि. व. 2006-07)
ITA NO.3553/MUM/2016 (A.Y.2006-07)
आअसं. 3554/मुं/2016 (नि. व. 2007-08)
ITA NO.3554/MUM/2016 (A.Y.2007-08)

DCIT(2)(3)(1), Mumbai ,
Room No.552, 5th Floor,
Aaykar Bhavan, M.K.Road,
Mumbai – 400 020

..... अपीलार्थी/ Appellant

बनाम Vs.

M/s. Tata Steel Ltd.
Bombay House, Homi Modi Street,
Fort, Mumbai – 400 001.
PAN:AAACT-2803-M

..... प्रतिवादी/ Respondent

C.O. NO.306/MUM/2017
[Arising out of ITA NO.3553/MUM/2016 (A.Y.2006-07)]
C.O. NO.307/MUM/2017
[Arising out of ITA NO.3554/MUM/2016 (A.Y.2007-08)]

M/s. Tata Steel Ltd.
Bombay House, Homi Modi Street,
Fort, Mumbai – 400 001.
PAN:AAACT-2803-M

..... Cross Objector

बनाम Vs.

DCIT(2)(3)(1), Mumbai ,
Room No.552, 5th Floor,
Aaykar Bhavan, M.K.Road,
Mumbai – 400 020

.... Appellant in Appeal

Revenue by : Shri Neehar Ranjan Pandey
Assessee by : Shri Nishant Thakkar with
Ms. Jasmin Amalsadvala

सुनवाई की तिथि/ Date of hearing : 20/09/2023
घोषणा की तिथि/ Date of pronouncement : 22/09/2023

आदेश/ORDER

PER VIKAS AWASTHY, JM:

The Revenue has filed appeal for the Assessment Years 2006-07 and 2007-08 against order of Commissioner of Income Tax(Appeals)-6, Mumbai [in short 'CIT(A)'] dated 26/02/2016, common for both the impugned assessment years. The assessee has filed Cross Objections raising legal ground in the appeal filed by the Revenue.

2. Since, the ground raised in both appeals by the Revenue and cross objections filed by the assessee for both the impugned assessment years are identical they are taken up together for adjudication and are decided by this common order.

ITA NO.3553/MUM/2016 & C.O. NO.306/MUM/2017 -A.Y. 2006-07:

3. The Revenue in appeal has raised solitary ground, the same is reproduced herein below:

" 2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the Assessing Officer to delete the addition of Rs 276,34,81,218/- for AY 2006-07 and Rs 432,95,96,989/- for AY 2007-08 based on show cause notices issued by the Government of Orissa for "Excess / illegal" mining, without appreciating the detailed facts brought on the record by the Assessing Officer".

4.. Shri Nishat Thakkar appearing on behalf of the assessee submits that the assessment for Assessment Year 2006-07 in the case of assessee was reopened on the basis of show cause notice from Government of Odisha to the

assessee for allegedly carrying out excessive mining operations. It was alleged that the assessee has indulged in excessive mining operations and profit resulting therefrom has not been disclosed in the books. During assessment proceedings, the assessee challenged the validity of reassessment proceedings. On merits the assessee furnished Auditor's certificate to show that the value of mining of raw minerals has already been accounted in the books of account for the F.Y.2005-06. Even if, there is any excessive mining, the same has also been accounted and income therefrom has been offered to tax. The Assessing Officer merely on the basis of assumptions brushed aside the documents placed on record by the assessee made huge addition of Rs,276,34,81,218/-.

4.1 Aggrieved by the assessment order dated 27/01/2014 passed u/s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 [in short 'the Act'], the assessee filed appeal before the CIT(A). The assessee in appeal primarily raised two issues. The assessee raised jurisdictional issue challenging validity of reopening and also assailed the addition on merits. In proceedings before the First Appellate Authority, the assessee furnished additional evidence i.e. the fresh show cause notice issued by the Dy. Director of Mines. In the fresh show cause notice/ Purported Notice (PN), the alleged excess mining levels were substantially reduced. The production level shown in PN was corresponding to the mining quantities recorded in the return and books of account of the assessee. Hence, the alleged discrepancy in the books stood resolved. The CIT(A) sought remand report on the additional evidence filed by the assessee. The Assessing Officer furnished remand report dated 28/12/2015, wherein he admitted that the quantities mentioned in PN are corresponding to the

Auditor's certificate and mining return filed by the assessee with the Odisha State Mining Authorities. However, he levelled some vague allegations of non-furnishing of books of account, etc. The Id. Authorized Representative of the assessee submitted that the CIT(A) after receiving remand report allowed relief to the assessee and deleted the entire addition on merits, however, the CIT(A) upheld the validity of reopening, thereby dismissing jurisdictional ground raised by the assessee in appeal. The Id. Authorized Representative of the assessee submitted that the Revenue is in appeal against the findings of CIT(A) on merits of the addition and the assessee has filed Cross Objections assailing the findings of the CIT(A) on jurisdictional issue. The Id. Authorized Representative of the assessee fairly stated that, if appeal of the Revenue is dismissed, the assessee's Cross Objections would become academic.

5. Per contra, Shri Neehar Ranjan Pandey representing the Department vehemently supported the assessment order and the findings of CIT(A) on jurisdictional issue. The Id. Departmental Representative submitted that the assessee has indulged in excessive mining operations and has not reported the profits arising therefrom in its books. The Id. Departmental Representative prayed for reversing the findings of CIT(A) on merits of the addition and restoring the assessment order.

6. We have heard the submissions made by rival sides and have examined the orders of authorities below. The solitary ground raised by the Revenue in appeal is against the findings of the CIT(A) in deleting addition of Rs.276,34,81,218/-, based on show cause notice issued by the Government of Odisha for excessive mining of minerals and ores. During the course of First

Appellate proceedings, the assessee placed on record PN issued by the Mining Authorities, wherein quantities of alleged excessive mining were substantially reduced. The CIT(A) forwarded the additional evidence filed by the assessee to Assessing Officer for his comments. The Assessing Officer vide letter dated 28/12/2015 furnished his report wherein he after verifying the quantities and value of mineral ore production as per PN came to the conclusion that the quantity of production/mining of ores mentioned in the PN corresponds to Auditors' Certificate and return filed by the assessee with the Orissa State Mining Authorities. For the sake of completeness relevant extract of the remand report is reproduced herein below:

“ 2.3 It will be noted from the above Table that the quantity of production of each type of ore determined in the applicable PN is in agreement with the quantity of production of such ore certified in the corresponding Auditors' Certificate and/or returned in the corresponding Mining Return filed by the assessee with the Odisha Mining Authorities during the relevant year and forming part of the records of the assessee. Further, Auditors have certified that the said production is recorded in the assessee's books of account”.

The CIT(A) on the basis of remand report deleted the addition. The CIT(A) has further placed reliance on the decision of DRP in assessee's own case for Assessment Year 2009-10 and 2010-11, wherein on identical set of facts the DRP has deleted the addition in respect of alleged profits from excessive mining. No material has been placed on record by the Revenue to controvert the findings of the CIT(A). We find no reason to interfere with the findings of CIT(A) on this issue.

7. In the result, appeal of the Revenue is dismissed being devoid of any merit.

8. The assessee in Cross Objections has raised jurisdictional issue assailing reopening of assessment. Since, in appeal by the Revenue we have upheld the findings of CIT(A) on merits, deleting the addition, the grounds raised by the assessee in Cross Objections have become academic and are dismissed as infructuous at this stage.

ITA NO.3554/MUM/2016 & C.O. NO.307/MUM/2017-A.Y. 2007-08:

9. Both sides unanimously stated that the grounds raised by the Revenue in appeal and grounds/additional grounds raised by assessee in Cross Objections are identical to the one raised in assessment year 2006-07. It was further stated that the facts resulting in addition in assessment year 2007-08 are identical to assessment year 2006-07, except the amounts.

10. A perusal of the assessment order shows that in reassessment proceedings addition of Rs.432,95,96,989/- has been made in the hands of assessee on account of unaccounted profits resulting from excessive mining of minerals. The assessee challenged the assessment order dated 27/01/2014 passed u/s. 143(3) r.w.s. 147 of the Act. Before the CIT(A), the assessee raised jurisdictional issue challenging validity of reopening, as well as, addition on merits. The CIT(A) upheld the validity of reopening and on merit deleted the addition for the reasons similar to assessment year 2006-07. We observe that the Revenue in appeal before us has raised single ground, verbatim to the ground raised in A.Y. 2006-07. No material has been placed on record before the Bench by the Revenue controverting the findings of CIT(A). Since, the facts germane to the issue are identical to assessment year 2006-07, the findings given by us while adjudicating the appeal of Revenue for assessment year

2006-07 would mutatis mutandis apply to the present appeal. In the result, appeal of the Revenue is dismissed.

11. The assessee has filed Cross Objections assailing the findings of CIT(A) on jurisdictional issue. Since, we have upheld the findings of CIT(A) deleting the addition on merits, the grounds raised in Cross Objection have become academic. Consequently, Cross Objections are dismissed as infructuous at this stage.

12. To sum up, appeal of the Revenue for assessment year 2006-07 & 2007-08 and Cross Objections of assessee for assessment year 2006-07 & 2007-08 are dismissed.

Order pronounced in the open court on Friday the 22nd day of September, 2023.

Sd/-

(S.RIFAUR RAHMAN)

लेखाकार सदस्य/ACCOUNTANT MEMBER
मुंबई/ Mumbai, दिनांक/Dated /09/2023
Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्तCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
- 5.. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai