

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 53/Ind/2023
(Assessment Year:2009-10)

Cummins Technologies India Pvt. Ltd. Industrial Area No.2 A.B. Road Industrial Area Dewas	Vs.	ACIT circle -1(1) Ujjain
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AABCT2018B		
Assessee by	Shri Ketan K. Ved. AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	10.07.2023	
Date of Pronouncement	25.08.2023	

O R D E R

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 27.12.2022 of Commissioner of Income Tax (Appeal), National Appeal Centre, Delhi for Assessment Year 2009-10. The assessee has raised following grounds of appeal:

“1:0 Re: Validity of impugned re-assessment Order and/or the additions made in terms thereof: 1:1 The Commissioner of Income-tax (Appeals) has erred in passing the impugned Order upholding the addition made by the Assessing Officer.

1:2 The Order passed by the Commissioner of Income-tax (Appeals) and / or the Assessing Officer is bad in law and hence the same should be struck down as such.

2:0 Re: Validity of re-assessment proceedings:

2:1 The Commissioner of Income-tax (Appeals) has erred in upholding the re-opening of the Appellant's assessment u/s. 148 of the Income-tax Act, 1961.

2:2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject the re-opening of assessment u/s. 148 was in excess of jurisdiction and the Commissioner of Income-tax (Appeals) ought to have held as such.

2:3 The Appellant submits that the proceedings u/s. 148 of the Act were not in accordance with law and consequently ought to be struck down.

Without prejudice to the above

3:0 Re: Addition on account of slow and non-moving inventory:

3:1 The Commissioner of Income-tax (Appeals) has erred in upholding the action of the Assessing Officer of making an addition of Rs. 2,94,03,474/- to the total income of the Appellant for the year on account of a change in the method of accounting for slow and non-moving inventories.

3:2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject no addition whatsoever is required and the stand taken by the Assessing Officer in this regard is incorrect and erroneous and the Commissioner of Income-tax (Appeals) ought to have held as such.

3:3 The Appellant submits that the Assessing Officer be directed to delete the addition made by him and to re-compute its total income and tax thereon accordingly.”

2. Ground no.1 & 2 are regarding validity of initiation of reassessment proceedings. Ld. AR of the assessee has submitted that the assessee company filed its return of income for the year under consideration on 25.09.2009 declaring total income at Rs.21,97,89,880/-. The case was selected for scrutiny through CASS and assessment order u/s 143(3) was passed on 22.03.2013 whereby the AO assessed the total income of the assessee at Rs.22,01,39,633/-. Subsequently it was noticed by the AO that in the audit report of the company produced during the original assessment proceedings it was mentioned at point no.3 of the note on accounts that the company has changed its estimate of provisions for

slow/non-moving inventory as a result of which profit before tax and inventory is lowered by Rs.2,94,03,474/-. The AO reopened the assessment by issuing notice u/s 148 on 17.03.2016. Ld. AR has referred to the reasons recorded by the AO at page no.144 of the paper book and submitted that there was no new material came to the knowledge of the AO after the assessment was completed u/s 143(3) of the Act and the notice u/s 148 of the Act was issued after expiry of four years from the end of the assessment year under consideration. Therefore, the Ld. AR has submitted that reopening after four years from the end of the assessment year is not valid when there is no failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment.

3. He has contended that the assessing officer himself stated that the provision made by the assessee for the year under consideration for slow/non-moving inventory was available on the assessment record at the time of passing the assessment order u/s 143(3) and therefore, the case does not fall in the category of failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. In support of his contention he has relied upon the judgment of Hon'ble Delhi High Court in case of *Pr. CIT vs. Topperware India ltd.* 236 Taxman 494 and submitted that the Hon'ble High Court has considered the fact in the said case that the AO only refers to the report of the statutory auditor section 44AB of the Act which report was already enclosed with the return filed by the assessee. Therefore, it was observed that factually, there was no new material that the AO came across so as to have 'reasons to believe that the income had escaped assessment'. Thus, the Ld. AR has submitted that when the original assessment was framed u/s 143(3) and reopening is after laps of four year from the end of the assessment year under consideration then the reopening of the assessment is hit by the first proviso to section 147 of the Act. He has further submitted that the assessing officer has not made any addition on the second point as recorded in the reasons for reopening and it is apparent that the same

was dropped by the AO while passing reassessment order. Thus, he has submitted that the reopening is not valid and liable to be quashed. The Ld. AR has submitted that though the writ petition filed by the assessee challenging the validity of the reopening of the assessment was dismissed by the Hon'ble High Court however, it was specifically observed while passing the order that anything observed in the said order will not come in the way of the assessee in respect of the proceedings which are going on before the income tax department as well as before other authorities.

4. On the other hand, Ld. DR has submitted that the issue of validity of reopening is now covered by the judgment of jurisdictional High Court dated 12.12.2015 whereby writ petition filed by the assessee was dismissed. He has relied upon the judgment of Hon'ble jurisdictional High Court on the issue of validity of reopening of the assessment in assessee's own case as well as the impugned order of the Ld. CIT(A).

5. We have considered the rival submissions as well as relevant material on record. In response to notice u/s 148 the assessee filed objections to the reopening of the assessment which were disposed of by the assessing officer vide order dated 28.11.2016 against which the assessee filed writ petition no.8306/2016. The said writ petition was dismissed by the Hon'ble High Court vide order dated 18.12.2016 and declined to admit the writ petition on the issue of validity of reopening of the assessment in para 14 to 18 as under:

"14- In the considered opinion of this Court, the order passed by the Assessing Officer makes it very clear that the assessee has failed to disclose fully and truly all materials facts at the time assessment proceedings initiated under Section 143(3). Not only this, Section 149 which provides for time limit of the Income Tax Act and the same reads as under:-

"Section 149. Time limit for notice: (1) No notice under section 148 shall be issued for the relevant assessment year,

(a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b) or clause (c);

(b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to bne lakh rupees or more for that year;

(c) If four years, but nor more than sixteen year, have elapsed from the end of the relevant assessment year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.

Explanation In determining income chargeable to tax which has escaped assessment for the purpose of this sub section, the provisions of Explanation-2 of Section 147 shall apply as they apply for the purposes of that section.

The Explanation-2 of Section 147 reads as under. (Income escaping assessment)

For the purpose of this Section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely

(a).

(b)...

(ba)...

(c) Where an assessment has been made, but-

(i) income chargeable to tax has been under assessed; or

(ii) such income has been assessed at too low rate; or

(iii) such income has been made the subject of excessive relief under this Act; or

(iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed."

15- In light of the aforesaid statutory provision, in the present case, notice has been served within six years from the end of the relevant assessment year and the tax effect is in crores of rupees and therefore, the Assessing Officer was justified in initiating proceedings and in rejecting the objections raised by the petitioner.

16- Learned counsel for the petitioner has also placed reliance upon a judgment delivered by the apex Court in the case of Jeans Knit Pvt. Ltd. Bangalore Vs. The Deputy Commissioner of Income Tax Bangalore & Ors. passed in Civil Appeal No.11189/2016 on 08/12/201 on the ground of alternative remedy and this Court is not

declining admission on the question of availability of alternative remedy.

17- The net result is that this Court is of the considered opinion that notice has been served within the time frame work to the assessee, notice has rightly been served as the Assessing Officer was having reasons to believe and there was a failure on the part of the assessee to disclose the fully and truly material and facts at the time of proceedings initiated under Section 143(3) of the Act..

18- Resultantly, admission is declined. However, it is made clear that anything observed by this Court in the present order will not come in way of the assessee in respect of proceedings which are going on before the Income Tax Department as well as before the other authorities.”

6. The Hon'ble High Court has held that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment and consequently declined to admit writ petition filed by the assessee. Therefore, the objection of the assessee against validity of reopening on the ground that there is no failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment has been considered by the Hon'ble jurisdictional High Court and decided against the assessee. Hence, we are of the considered opinion that this issue is covered by the judgment of Hon'ble High Court in assessee's own case whereby the objection raised by the assessee against reopening of the assessment has been rejected. The decisions relied by the Ld. AR of the assessee would not help the case of the assessee as jurisdictional High Court has decided this issue against the assessee. Accordingly ground no.1 & 2 are dismissed.

7. Ground no.3 is regarding the addition made by the AO on account of slow and non-moving inventory. The assessee has also filed an additional ground vide application dated 28th June 2023 which reads as under:

“1. Without prejudice to the Ground of Appeal No. 3 as originally raised, the Appellant submits that while adding back the provision on account of slow and non-moving Inventory of Rs. 2,94,03,474/- to the closing inventory for the year, the Commissioner of Income-tax

(Appeals) ought to have directed the Assessing Officer to consider the consequential impact of the increase in the valuation of inventory while determining the value of opening inventory for Assessment Year 2010-11.”

8. Ld. AR of the assessee has submitted this additional ground raised by the assessee is only an alternative plea in respect of ground no.3 of the original grounds of appeal raised by the assessee. Thus, the Ld. AR has submitted that the additional ground is part and parcel of the original ground no.3 and does not require any fresh investigation of facts.

9. On the other hand Ld. DR has not disputed the fact that the additional ground raised by the assessee is an alternative pleas in respect of ground no.3 raised in the original grounds of appeal. Accordingly in the facts and circumstances of the case and in the interest of justice the additional ground raised by the assessee is admitted for adjudication along with ground no.3 of the assessee appeal.

10. Ld. AR of the assessee has submitted that the assessee company is engaged in the manufacturing of turbochargers and due to fast change of technology of automobile industry on account of Pollution norms and rapidly changes in the engineering of the vehicle produces and component of auto industry are also become obsolete within the short period of time. He has submitted that the assessee has not changed the accounting policy or method of accounting for valuation of the inventory. The assessee has been following the method of valuation of the inventory based on cost or realization value whichever is less. The assessee has been valuing slow and obsolete inventory by following the realization value of the said inventory. He has referred to schedule 8 of the balance sheet which is part of the auditor report and submitted that the assessee has been following the method of valuation at lower of cost or net realization value. He has then referred to the schedule 17 and submitted that the the financial statements have been prepared in all material aspects in accordance with accounting principles applicable in India and notified u/s 211(3C) of Companies Act 1956. The inventories are also valued at lower of the cost

or net realizable value. Therefore, there is no change of method of accounting but the only change in the year under consideration is estimation of provision for slow/non-moving inventory, as a result of which the inventory is valued at lower cost as reported in the audit report.

11. Ld. AR has submitted that in form 3CD as per clause 12(a) it is reported that inventories are valued on lower of the cost and net realizable value. There is no deviation in the method of valuation of purchase and sale of goods and inventory from the method prescribed u/s 145A except for the service tax, sales tax and excise tax effect is given. The Ld. AR has submitted that earlier the assessee company was making the provision of slow/non-moving obsolete inventory based on the age of inventory whereas for the year under consideration the company has moved to a more stringent method of making a provision based on the consumption pattern. The assessee company is using window of 26 weeks past history and 8 weeks future to work out the slow/non-moving inventory. He has referred to the table for writing of the slow/nonmoving inventory based on the parameters of number of weeks and submitted that up to 50 weeks there is no provisions, from 51 to 100 weeks 50% is taken as the value and 101 and above weeks 100% provisions. Therefore, there is a change in its estimation of provision for slow/non-moving inventory from age of the inventory to consumption pattern as a basis. He has relied upon the judgment of Hon'ble Supreme Court in case of *CIT vs. Alfa Laval India Ltd.* 295 ITR 45 & Mumbai Benches of the tribunal in case of *DCIT vs. B. Arunkumar Tarding Ltd.* 96 ITD 194 as well as decision of Delhi Benches of Tribunal in case of *Pr. CIT vs. Tupperware India Pvt. Ltd.* 151 ITD 719 and submitted that when the assessee is following consistent policy of valuation of closing stock on the basis of net realizable value which is in accordance with account principles then the basis of net realization value which is more realistic cannot be said to be divergent to the regularly employed method of valuation. Ld. AR has further submitted that for the year under consideration the assessee has followed the same principles of valuation

but the realization of the non-moving inventory is changed from age of the stock to the consumption pattern which is more realistic.

12. Alternatively the Ld. AR has submitted that once the AO has made the addition on this issue by enhancing the value of the closing stock then without giving the consequential effect of higher value of opening stock for the subsequent year would amount to double taxation. Ld. AR has submitted that neither the AO nor the Ld. CIT(A) has considered this aspect while passing the impugned order. He has referred to the assessment order for the subsequent assessment year wherein no adjustment is granted in the value of the opening stock of the amount which was added in the value of closing stock for the year under consideration. Thus, the Ld. AR has submitted that the addition made by the AO for the year under consideration without giving consequential effect in the subsequent year amounts to double taxation. He has further submitted that for A.Y.2010-11 the assessee has paid the tax at the same rate as paid for the year under consideration. Thus the Ld. AR has submitted that the assessee has paid the tax for the A.Y.2010-11 at the maximum marginal rate and therefore, the value of the closing stock for the year under consideration is revenue neutral. In support of his contention he has relied upon the judgment of Hon'ble Supreme Court in case of CIT vs. Excel Industries Ltd. 350 ITR 295.

12. On the other hand Ld. DR has submitted that there is no dispute that the assessee has changed the basis of the valuation of the closing stock for the year under consideration without explaining the justifiable reason for such change which has resulted reduction of the profit of the year under consideration. He has relied upon the order of the Ld. CIT(A) and submit that the assessee has not produced any material to establish that the change in the value of the stock for the year under consideration is bona fide or is guided by the business expediency.

13. We have considered the rival submissions as well as relevant material on record. The assessing officer has made the addition of

Rs.2,94,03,474/- on account of slow/non-moving inventory written off by the assessee on the basis of net realization value worked out by following consumption pattern of the stock from 0 to 50 weeks, 51 to 100 weeks, 101 to above weeks taking percentage of provisions up to 50 weeks 0%, 51 to 100, 50% and 101 to above, 100% provision. This valuation of non-moving stock taking net realization value on consumption basis has resulted reduction of the value to the tune of Rs.2,94,03,474/- which was not accepted by the AO and added to the income of the assessee. Before the AO the assessee has explained the reasons for change of the basis of the value of net realization value of the non-moving stock which is reproduced by the AO at page no.2 to 4 as under:

“A. Slow/obsolete inventory Rs. 2,94,03,474/

The assessee Company is engaged in the manufacturing of turbochargers and during the financial year 2008-09, the company changed its estimate of providing for slow/non-moving inventory.

Earlier Method

Earlier the company was making the provision based on the age of the inventory

New Method

During the financial year 2008-09, the company changed the method. it has now moved to a more stringent method of making a provision based on the consumption pattern. In the new method, Company is using a window of 26 weeks' past history and 8 weeks' future to work out the slow/non-moving inventory. The slow/ non- moving inventory stock was written off based on the following parameters:

<i>Number of Weeks</i>	<i>Percentage of reserve</i>
<i>0 to 50</i>	<i>0%</i>
<i>51 to 100</i>	<i>50%</i>
<i>101 to above</i>	<i>100%</i>

If any of the part is identified as obsolete, a 100% provision is required irrespective of the usage category.

Due to change in its estimate of providing for slow/ non-moving inventory, Company's profit before tax and Inventory for the financial year 2008-09 is lower by Rs. 2,94,03,474/-.

It is hereby submitted that making provision of slow/non-moving inventory is mandatory in accordance to the Accounting Standard 2 and it is necessary for the Company to follow the Indian Accounting Standard as per the Companies Act. For your kind attention, we rely on the following decided cases of the honorable courts in favour of the Assessee:

CIT vs. IBM India Ltd. (2015) 55 taxmann.com 515 (Karnataka) It has been held by the court that the said provision is created essentially in a situation, where the market value of the stock and spares in hand as on the last date of the financial year, is lower than the cost of such stock and spares. The said accounting treatment is in compliance with the provisions of Accounting Standard-2 issued by the Institute of Chartered Accountants of India which states that the closing stock would need to be valued at cost or net realizable value whichever is lower. It is also on record that a similar provision for obsolescence has been created in the earlier years too. (Para 7)

Accounting Standards notified under section 145(2) in particular Accounting Standard-I categorically states that the accounting treatment and presentation in financial statements of transactions should be covered by substance and not merely by legal form. Further, section 145(A) provides notwithstanding anything to the contrary contained in section 145 that the valuation of purchase and sale of goods and inventory for the purposes of determining the income chargeable under the head 'Profits and gains of business or profession' shall be (a) in accordance with the method of accounting regularly employed by the assessee. [Para 9]

Therefore, what is to be seen is how the assessee is maintaining the accounts regularly in the course of his business and the accounting treatment and presentation of financial statement of transactions should be covered by the substance and not merely by the legal form. It is the principle which is to be kept in mind by both the appellate authorities. The aforesaid material clearly demonstrates that instead of showing cost price as nil in the profit and loss account, cost price of the items is given in profit and loss account and a provision is made for obsolescence in inventory showing that the market value is nil and that is the mode which the assessee was following even for the previous years. Under these circumstances, there is no justification to interfere with the well-considered order passed by both the authorities. [Para 10] - Held in favour of the Assessee.

In another case the honorable Delhi High Court in CIT vs. Tupperware India (P.) Ltd. [2015] 53 taxmann.com 232 (Delhi) it has been held that One cannot appreciate and understand how the principle of matching can apply, without examining the question whether the market price of obsolete and unsaleable items was less than or lower than the manufacturing costs. If the market price of obsolete or unsaleable items is less than or lower than the cost price, the said position can be the basis for computing closing stock. It is noticeable that the respondent-assessee has been following this practise for several years and similar issue had arisen in the assessment year 2005-06, but the Revenue has not filed any appeal in respect of the said year. In fact, in the assessment year 2008-09, some of the obsolete items were sold and sale consideration received has been duly accounted for. This fact has been noted by the Tribunal in the impugned order. Thus, on the second issue, we see no reason to interfere. The appeals of the revenue are accordingly dismissed.

Reliance is also placed on the principle laid down in the judgement of the honorable Apex Court in Chainrup Sampat Ram v. CIT (1953] 24 ITR 481. The aforesaid principle is well recognised and accepted. However, valuation of the closing stock on the basis of market price, if lower, should have foundation and basis on how market price has been computed and not merely on ipsidixit.

Therefore, the provision made for the obsolete inventory or non-moving inventory of Rs. 2,94,03,474/- is quite allowable in terms of the provisions of the Income-tax Act, 1961 and hence no addition is warranted on this point of reopening of the case.”

14. The assessing officer has disallowed this value only on the ground that the assessee has changed the method during the year which has resulted in reduction of profit before tax. The AO has not verified whether the basis for net realization value of non-moving inventory is realistic or only artificial method of reducing the taxable income during year under consideration. It is pertinent to note that there is no change of accounting policy of the assessee for the year under consideration so as the valuation of the closing stock is concerned as the assessee is following consistent policy of valuation of the closing stock at cost or net realization value whichever is less in accordance with accounting standard accepted u/s 145A. The only change for the year under consideration is shifting the basis of net realization value from the age of the stock to consumption pattern. In any cases the reduction in the value of the closing shall have consequential effect of reduction in the opening stock of the subsequent

year and therefore, this exercise is revenue neutral when the assessee has been paying the tax at the maximum marginal rate. The assessee has filed a copy of the assessment order passed for the A.Y.2010-11 wherein the assessee has declared total income of Rs.70,39,93,760/- as in comparison to the total income declared by the assessee for the year under consideration of Rs.21,97,89,880/-. Therefore, there is increase of more than three times in the total income reported by the assessee in the subsequent assessment year and the AO has passed scrutiny assessment u/s 143(3) on 28.02.2014 whereby the total income of the assessee was assessed at Rs.70,77,31,246/-. There is no adjustment made on account of this enhanced value of closing stock for the year under consideration to the opening stock of the subsequent year i.e. A.Y.2010-11. Thus, this addition made by the AO for the year under consideration has resulted double taxation of the said income.

15. The Hon'ble Supreme Court in case of *CIT vs. Excel Industries Ltd.* (*supra*) has held in para 32 as under:

“32. Thirdly, the real question concerning us is the year in which the assessee is required to pay tax. There is no dispute that in the subsequent accounting year, the assessee did make imports and did derive benefits under the advance licence and the duty entitlement pass book and paid tax thereon. Therefore, it is not as if the Revenue has been deprived of any tax. We are told that the rate of tax remained the same in the present assessment year as well as in the subsequent assessment year. Therefore, the dispute raised by the Revenue is entirely academic or at best may have a minor tax effect. There was, therefore, no need for the Revenue to continue with this litigation when it was quite clear that not only was it fruitless (on merits) but also that it may not have added anything much to the public coffers.”

16. Therefore, when the assessee is paying tax at the same rate as in the year under consideration and rather declared more than three times of income to tax in the subsequent year then this issue is revenue neutral and is entirely academic in nature. Accordingly in the facts and circumstances of the case when the assessee has explained the reasons for

change in the basis of making the provision from age of non-moving inventory to consumption pattern which is more realistic so far as the realization value is concerned and this change has no revenue effect as the reduction in the closing stock of inventory shall have consequential effect of reduction the opening stock of the subsequent year then the addition made by the AO is not justified. Accordingly in view of the facts and circumstances of the case as discussed above and following judgment of Hon'ble Supreme Court in case of *CIT vs. Excel Industries Ltd. (supra)* the addition made by the AO is deleted.

17. In the result, appeal of assessee is partly allowed.

Order pronounced in the open court on 25.08.2023.

Sd/-

(B.M. BIYANI)
Accountant Member

Indore, 25.08.2023

Patel/Sr. PS

Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

Sd/-

(VIJAY PAL RAO)
Judicial Member

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*