

**THE INCOME TAX APPELLATE TRIBUNAL  
DEHRADUN BENCH, NEW DELHI  
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER,  
AND  
SHRI VIMAL KUMAR, JUDICIAL MEMBER**  
(Through Video Conferencing)

**ITA No. 19/DDN/2023  
(Assessment Year: 2020-21)**

Krishna Stone Industries Pvt. Ltd, Guru Farm bareilly Road, haldwani, Nainital, Uttarakhand (Appellant) <b>PAN:AABCK4973E</b>	Vs. ITO, AU, Haldwani, Uttarakhand (Respondent)
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Assessee by :	Shri Rahul Khare, Adv
Revenue by:	Shri Amar Pal Singh, JCIT DR
Date of Hearing	20/08/2024
Date of pronouncement	29/08/2024

O R D E R

**PER M. BALAGANESH, A. M.:**

1. The appeal in ITA No.19/DDN/2023 for AY 2020-21, arises out of the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'Id. NFAC', in short] in Appeal No. ITBA/NFAC/S/250/2022-23/1049199831(1) dated 27.01.2023 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 21.09.2022 by the Assessing Officer, NFAC.
2. The only issue to be decided in this appeal is as to whether the Id National Faceless Appeal Centre (NFAC) was justified in confirming the addition of Rs. 1,24,14,552/- on account of difference of valuation of stock in the facts and circumstances of the instant case.
3. We have heard the rival submissions and perused the material available on record. The assessee is a manufacturing industry engaged in

the industry of stone crushing. The assessee filed its return of income at Rs. Nil with current year business loss of Rs. 6,64,28,881/-. The assessee furnished the quantitative details of principle items of goods traded of raw material as well as finished goods, production, sales together with its value thereon before the Id AO. The assessee is in the business of contract in forest department for excavating mixed sand, boulders etc known as 'river bed material' or RBM procured from River Gaula. In addition to RBM, large stone dug from pits and crushed into small grit. RBM is purchased from the Govt Department Prabhagiya Van Vikas Nigam Khanan (Forest Department), and from other crushers and parties. The raw material is segregated through vibrating screens of different mesh sizes and speeds and stored in different heaps of sand and different sizes of grit. Water is sprinkled over the heaps to clear the silt from the material. Such processed sand is known as washed sand. Income is from the sale of finished goods, i.e. grit of different sizes and sand, and also of scrap. There has been no change in the operations or the method of accounting of the assessee since inception. New management entered the company in FY 2019-20, and made only one minor change -inventory of 'Raw material and silt' was henceforth recorded separately in two sub-heads, i.e. 'Raw material' and 'Silt'. As per the rules and standard industry practice, pits from which stone is dug up are refilled. Silt from the manufacturing process is normally adequate for this refilling, as it is a waste product of the manufacturing process and has no value of itself. If the pit is not filled completely, it may also be done by purchased silt or fertile soil. However, assessee has not purchased silt for the filling. Although assessee had volunteered an indicative cost of silt in the market, assessee clearly indicated that silt should not be considered as 'stock' since it is used for filling the pits. It is obvious that the only cost of filling the pit is the cost of moving the silt, because the silt, unless sold in the market, has no value in itself.

4. The Id AO did not accede to the aforesaid contentions of the assessee on the valuation of stocks and proceeded to value the silt arbitrarily at market rate by determining it to be capital expenditure and disallowed the same in the sum of Rs. 1,24,14,552/-. The case of the revenue is that the cost of silt which was filled in the pit which was dug in earlier years was not claimed by the assessee as revenue expenditure in earlier years hence, it is capital in nature. The revenue contended that filling of pit dug is capital expenditure and does not in any way increase the earning capacity of the concern. From the quantitative details submitted by the assessee, silt quantity was 17,73,507.47 quintals and average cost per quintal estimated at ₹7 and total cost of silt estimated to be ₹1,24,14,552 by the Id AO.

5. The short point that arose for our consideration is whether the cost of silt would be capital expenditure or revenue expenditure. As per the business model of the assessee, whenever stone is extracted from the mines, the pits will be formed and pits will be filled with the silt. This is recurring action, therefore, the expenditure involved in this work comes under revenue expenditure and does not give any benefit to the assessee in the capital field and hence it becomes purely revenue in nature because once the stone is extracted and resultantly, it is filled with the existing silt, there cannot be any further action required. The Id CIT appeals in para 7.3 of its order, admits that assessee had not bought any new material to fill up the pits but had only utilized the existing silt which were already available with the assessee. Having held so, it is very clear that there was silt already available due to digging out of materials, which was only utilized for filling up the dug pits. Hence, the same would constitute the revenue expenditure. It is also pertinent to note that the returned loss of Rs. 6,64,28,881/- ultimately stood assessed at a loss of Rs. 5,40,14,329/- even after making the addition on account of valuation in respect of cost of silt of Rs.

1,24,14,552/- . It could be seen that there is absolutely no malafide intention for the assessee to claim a capital expenditure to be a revenue expenditure. Effectively assessee is only trying to value the stock with raw materials left over having saleable value and raw materials not having saleable value, which is in accordance with the accepted trade practice of valuation of stock. The same is also in accordance with Accounting Standard-2 for 'valuation of inventories' issued by Institute of Chartered Accountants of India. We find that reliance by the Id AR on the decision of the Hon'ble Delhi High Court in the case of CIT v. Dalmia Cement (Bharat) Ltd reported in 215 ITR 441 (Delhi) strongly supports the case of the assessee. For the sake of convenience, the relevant operative portion of the said order is reproduced as under:-

*"(2.)THE assessee is being assessed in the status of a company and has been carrying on in its Dalmia Magnesite Corporation Unit in Salem, the business of raising magnesite ore converting into Dead Burnt Magnesite (DBM). In the year under consideration the assessee showed an opening stock value of DBM dust at Rs. 77,50,677 but it showed the same in the closing stock at nil value on the ground that it was having silica content above a specified percentage, i.e., at 15% and, hence, it had no market value. In the course of assessment proceedings it was found that in the earlier years the assessee was valuing DBM dust stock "raw material cost plus packing charges" but for the assessment year in question it valued the closing stock at "raw material cost + packing charges or realisable value whichever was lower". The realisable value of DBM dust was considered as nil on the ground that it was not saleable. According to the assessee the aforesaid change was made bona fide, in the light of the prevailing facts, situation and in conformity with the principle and practice of valuation of inventories having no realisable value. The change in the method of valuing the closing stock decreased the value of DBM dust by Rs. 70,50,677 thereby reducing the assessable income by the same amount. The Assessing Officer(AO) rejecting the assessee's contention valued the closing stock at Rs. 77,50,677 and added it to the assessee's income on the ground that upto the asst, yr.1983 -84 the assessee was showing the value of DBM dust at cost only and in order to determine the true profit in any particular year it is necessary that the system of valuation adopted for opening stock as well as the closing stock should be on identical lines. On appeal the CIT after going through the scheme of the assessee and various case laws in the matter came to the conclusion that the change in the method of valuation of DBM dust stock is bona fide but it cannot be*

*believed that it had no value at all and accordingly the CIT(A) reduced 1/3rd of the amount of Rs. 77,50,677 being addition made by the learned AO for the raw material and packing charges cost of the closing stock of DBM dust and upheld the addition of the balance 2/3rd amount thereof. The matter was thereafter taken to the Tribunal. After consideration of the materials available from records the Tribunal held that there is no dispute that the change in the method is bona fide and that there is also no dispute that this product had no market value at all. According to the Tribunal, the realistic method of valuation would be to value it at nil, and accordingly upheld the contention of the assessee. Hence, the present reference application under S. 256(2) of the IT Act is at the instance of the Revenue after the application filed by it under S. 256(1) was rejected by the Tribunal on the ground that the findings given by the Tribunal in the assessee's appeal is a finding of fact and that it did not give rise to any referable question of law."*

6. Similar was the view taken by the Hon'ble Bombay High Court in the case of CIT v. Modern Terry Towels Ltd reported in 357 ITR 750 (Bom) and Hon'ble Allahabad High Court in the case of CIT Vs. Dhampur Sugar Mills Pvt. Ltd reported in 375 ITR 296 (All). In view of the above observations and respectfully following the judicial precedents relied upon hereinabove, the grounds raised by the assessee are here by allowed.

7. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 29/08/2024.

-Sd/-  
**(VIMAL KUMAR)**  
**JUDICIAL MEMBER**

-Sd/-  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 29/08/2024

A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	27/08/2024
Date on which the typed draft is placed before the dictating member	28/08/2024
Date on which the typed draft is placed before the other member	
Date on which the approved draft comes to the Sr. PS/ PS	
Date on which the fair order is placed before the dictating member for pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	
date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	