

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 228/JPR/2024
निर्धारण वर्ष/Assessment Year : 2012-13

Amar Partap Steels Pvt. Ltd., A-161, RIICO Industrial Area, Bagroo, Bagroo, Jaipur	बनाम Vs.	ITO, Ward-7(2), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAECA 9152 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Rohan Sogani, CA
राजस्व की ओर से / Revenue by : Sh. Monisha Choudhary, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 22/08/2024
उदघोषणा की तारीख / Date of Pronouncement: 03/10/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, A.M.

This is appeal filed by the assessee aggrieved from the order of the National Faceless Appeal Centre, Delhi [for short CIT(A)/(NFAC)] for assessment year 2012-13 dated 06.01.2024, which in turn arises from the order passed by the ITO, Ward 7(2), Jaipur passed under Section 143(3) of the Income tax Act, 1961 (in short 'the Act') dated 17.03.2015.

2. In this appeal, the assessee has raised following grounds.

“1. In the facts and circumstances of the case and in law, Id. CIT(A)/National Faceless Appeal Center ("NFAC") has erred in confirming the action of the Id. AO in rejecting the books of accounts of the assessee company by invoking the provisions of Section 145(3) of the Income-tax Act, 1961. The action of the NFAC is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the rejection of books of accounts of the assessee company as done by the Id. AO and confirmed by the NFAC.

2. In the facts and circumstances of the case and in law, Id. CIT(A)/NFAC has erred in confirming the action of the Id. AO, in making factually incorrect observations regarding maintenance of books of accounts of the assessee Company and thereby rejecting the books of accounts under Section 145(3). The action of the NFAC is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the rejection of books of accounts.

3. In the facts and circumstances of the case and in law, Id. CIT(A)/NFAC has erred in confirming the action of the Id. AO, in upholding the trading additions made by applying Gross Profit Rate of 4%, against the declared Gross Profit Rate of 3.59%, which resulted into trading additions of Rs. 94,38,105. The action of the NFAC is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by accepting the book results and deleting the trading addition of Rs. 94,38,105, upheld by the NFAC.

4. In the facts and circumstances of the case and in law, Id. CIT(A)/NFAC has erred in confirming the action of the Id. AO, in disallowing a sum of Rs. 3,91,608 of Employees' Contribution to PF and Rs. 1,04,705/- of Employees' Contribution to PF and Rs. 1,04,705/- of employees' contribution to ESI under section 36(1)(iv)/36(1)(va) of IT Act, 1961. The action of the NFAC is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the said disallowance of Rs. 4,96,313 (3,91,608 + 1,04,705).

5. The assessee company craves its rights to add, amend or alter any of the grounds on or before the hearing.”

3. The fact as culled out from the records is that the assessee filed its return of income for the assessment year under consideration declaring total income 'Nil' setting off the losses

carried forward. The assessee carried forward the losses of Rs. 29,67,256/- out of which the loss of Rs. 5,53,711/- was set off against the income declared by the assessee for the assessment year under consideration. The assessee engaged in business of manufacturing of MS Ingots and TMT Bars in the brand name of 'AMCO TMT saria'.

3.1 The case of the assessee was selected for scrutiny under CASS. Notice u/s 143(2) of the Income Tax Act, 1961 was issued on 08.08.2013 which was duly served upon the assessee. During the course of examination of books of accounts, purchase/sale bills, stock register and bills/vouchers of expenses claimed by the assessee in the profit and loss account, Id. AO noticed that the assessee did not maintain the purchase/sale bills and bills/vouchers of expenses properly. The assessee could not produce some purchase bills according to the stock register while checking the same. While checking the stock register, it was noticed that the assessee shown the scrap on 21.04.2011, 23.04.2011, 08.08.2011, 11.08.2011, 09.08.2011, 18.08.2011, 18.09.2011, 16.01.2012, 19.03.2012, and 20.03.2012 which was transferred for re- cycling but the same was not recorded by the

assessee in its books of accounts during the year under consideration and no particular transfer date was mentioned on the register, when the such materials were transferred for re-cycling. The dates of transfer of scrap were not cleared in the stock register. The assessee was asked to submit its explanation in respect of above discrepancy through show cause notice issued to the assessee on 23.02.2015.

3.2 In compliance assessee filed the reply along with the register of raw materials & goods which was not produced while examination of books of accounts and revised daily stock register which was not matched with the photocopies of daily stock register taken while the examination of books of accounts and stock register of the assessee. The assessee also produced the raw materials stock register which was not produced at the time of books of accounts produced for examination. It means, the assessee did not maintained the above raw materials stock register. The same was prepared after examination of the books of accounts. The assessee had no basis for scrap & shortage.

3.3 The Id. AO based on this information prepared a comparative chart on the basis of both the stock register and notice that the assessee did not maintain the books of accounts properly because as per table prepared by him the figures of above both registers are different to each other. The assessee submitted its reply of the show cause notice along with the modified daily stock register which is totally different from the daily stock register produced while the examination of the books of accounts. The assessee did not maintain the daily stock register during the year under consideration. No correct stock can be estimated without the stock register maintained properly. The assessee engaged in the business of manufacturing of MS Ingots and TMT Bars in the brand name of "AMCO TMT saria".

3.4 Ld. AO also noted that the GP rate declared by the assessee during the year is lower than the same declared in the immediate preceding year. During the test check of the books of accounts, stock register as well as the bills & vouchers, some deficiencies were noticed i.e.

- i. Assessee did not maintain stock register properly of the material and consumption of material properly could not

be verified. It cannot be verified as to how much material was purchased and how much material was utilized and sold. Valuation of opening and closing stock has been made by the assessee on estimated basis.

- ii. Expenses are not fully supported by vouchers.
- iii. Most of vouchers are internal vouchers, some of them are unsigned.

In nutshell, assessee's books of accounts were not reliable and expenses claimed by the assessee seem excessive. Thus, there is no alternative except rejecting the assessee's books and accordingly Id. AO rejected the books of accounts invoking the provisions of section 145(3) of the Income Tax Act, 1961. While doing so, Id. AO noted that in the Assessment Year 2011-12, GP was made @ 5%, the Id. AO relying on that estimation made estimated GP @ 5% and thereby made treating the addition of Rs. 1,00,45,615/-.

Ld. AO also made additions of Rs. 4,96,313/- being the payment of PF & ESI made by the assessee beyond doubt data as prescribed respective Acts. Based on these observations, the

assessment was completed by making the aforesaid two additions in the hands of the assessee.

4. Aggrieved from the order of the Assessing Officer, assessee preferred an appeal before the Id. CIT(A)/NFAC. Apropos to the grounds so raised the relevant finding of the Id. CIT(A)/NFAC is reiterated here in below:

“4. Ground No. 1

I have gone through the assessee's submissions and I have also considered assessment order and facts and circumstances of the case. During the course of assessment proceedings initially the assessee filed stock registers for verification of the AO in which the AO noticed that the assessee showed scrap on 21.04.2011, 23.04.2011, 08.08.2011, 09.08.2011, 11.08.2011, 18.08.2011 and other dates which was transferred for recycling but the same was not recorded by the assessee in his books of accounts. The dates of transfer of scraps was also not mentioned in stock registers. Therefore, the AO issued show cause notice to clarify the above discrepancy. Secondly, some of the purchase bills were found which are not in according to stock registers, as well as some of the bills and vouchers of expenses were also not maintained properly, therefore, the AO issued show cause notice. In response to the show cause notice the assessee filed a reconciliation chart showing comparison of raw materials and scraps. Then the AO found various discrepancies in registers submitted prior to show cause notice and registers submitted after show cause notice. The AO noticed these discrepancies are as under:

For instance, on 21.04.2011, 09.08.2011, 18.08.2011 the variations are as under:

Date	Opening balance		Quantity manufactured		Total	
	(loose)		(loose)			
	As per register produced while the examination of books of accounts	As per register produced in the reply of the show cause	As per register produced while the examination of books of accounts	As per register produced in the reply of the show cause	As per register produced while the examination of books of accounts	As per register produced in the reply of the show cause
21.04.2011	167.640	162.593	2.312	3.215	169.950	165.808
09.08.2011	156.215	80.048	1.435	2.480	157.650	82.528
18.08.2011	106.755	39.223	2.785	1.710	109.540	40.933

From the above table, it can be easily understood that there was huge variation in stock registers produced prior to the show cause notice and after the show cause notice. Further, the assessee also could not submit some of the bills/vouchers of expenses incurred. In view of this, the AO rejected the books of accounts and went ahead for estimation of profit. I totally agree with the view taken by the AG in the given facts and circumstances the view taken by the AO of rejection of books of accounts is totally backed and substantiated by proper material. Therefore, rejection of books of accounts is very much in accordance of law. However, estimation of Gross profits @ 5% seems to be little higher side and therefore, to meet the ends of justice the AO is hereby directed to adopt revised GP by taking average GP of AY 2011-12 and 2012-13 (as submitted in the returns of income by the assessee). The revised GP is hereby worked out as follows:

Assessment Year	Total turnover	Gross Profit	GP Rate
2011-12	62,42,57,437	2,73,56,704	4.38%
2012-13	94,38,10,561	3,38,44,913	3.59%

$$\text{Revised GP} = (4.38 + 3.59)/2 = 3.98$$

As mentioned above, the revised GP comes to nearly 4%. The AO is hereby directed to adopt GP of 4% instead of 5% and rework additional trading income accordingly. Hence, this ground of appeal is partly allowed.

5. Ground no. 2:

I have gone through the above submissions and also considered the various case laws relied on by the appellant. From the facts it is understood that the assessee collected employees' contribution of ESI and PF and paid beyond due date as specified by the concerned authorities which is not allowable u/s 36(i)(va) r.w.s. 2(24) (X) and 43B. Hon'ble Apex Court brought conclusions to the various disputes in this regard by its recent judgement in the case of Checkmate Services Pvt Ltd Vs CIT-1 [448 ITR 518] and clearly held that any employees' contributions of PF & ESI paid beyond due dates of the concerned PF and ESI statutes are not allowable as expenditure. By respectfully following the above judgement, the ground raised by the appellant is hereby dismissed.

In the result, the Appeal is partly allowed.”

5. Assessee feeling dissatisfied with the order of the Id. CIT(A) prefers the present appeal on the grounds so raised and reiterated herein above. In support of the various grounds so raised the Id. AR appearing on behalf of the assessee has filed their written submission which is extracted in below;

“Assessee company is engaged in business of Manufacturing of MS Ingots and TMT Bars in the brand name of “AMCO TMT saria”. Assessee company filed its Return of Income, for the relevant Assessment Year, on 07.09.2012, declaring total income of Rs. Nil.

GROUND NO. 1-3 REJECTION OF BOOKS OF ACCOUNTS AND APPLICATION OF GP%

1. ASSESSING OFFICER & NATIONAL FACELESS APPEAL CENTER [CIT(A)]

- 1.1 During the course of assessment proceedings, Id. AO rejected the Books of Accounts of the assessee company on the following premise: -
- 1.1.i Purchases, sales bills and vouchers for expenses were not properly maintained by the assessee company. (AO order Page 3, Para 3)
 - 1.1.ii Assessee company could not produce some purchase bills according to the stock register. (AO order Page 3, Para 3)
 - 1.1.iii On examination of the stock register, it was noticed that on certain dates, assessee company had shown transfer of scrap, for the purpose of recycling, but such transfer was not recorded in its books. Further no transfer date was mentioned in the register when such material was transferred for recycling. (AO order Page 3, Para 3.1)
 - 1.1.iv Some purchases bills were not found according to the stock register as the bills/vouchers of expenses were not maintained properly. (AO order Page 4, Para 3.2)
 - 1.1.v Assessee company did not maintain stock register for Raw Materials. The same was prepared during the course of assessment proceedings. (AO order Page 4, Para 3.3)
 - 1.1.vi Modified daily stock register was totally different from the daily stock register produced during the examination of books initially. (AO order Page 5, Para 3.4)
- 1.2 Ld. AO, after rejecting the books of accounts, applied GP Rate of 5% on turnover of Rs. 94,38,10,562, as against GP Rate of 3.59% declared by the assessee company. This resulted into trading additions of Rs. 1,33,45,615.
- 1.3 Ld. CIT(A) upheld the rejection of books of accounts, as done by the Id. AO, with any cogent basis and simply following what was done by the Id. AO. Thereafter, Id. CIT(A) directed the Id. AO to adopt GP of 4% instead of 5%. Revised GP as worked out by the Id. CIT(A) is as under:-

Assessment Years	Total Turnover	Gross Profit	GP Rate
2011-12	62,42,57,437	2,73,56,704	4.38%
2012-13	94,38,10,561	3,38,44,913	3.59%

$$\text{Revised GP} = (4.38 + 3.59)/2 = 3.98$$

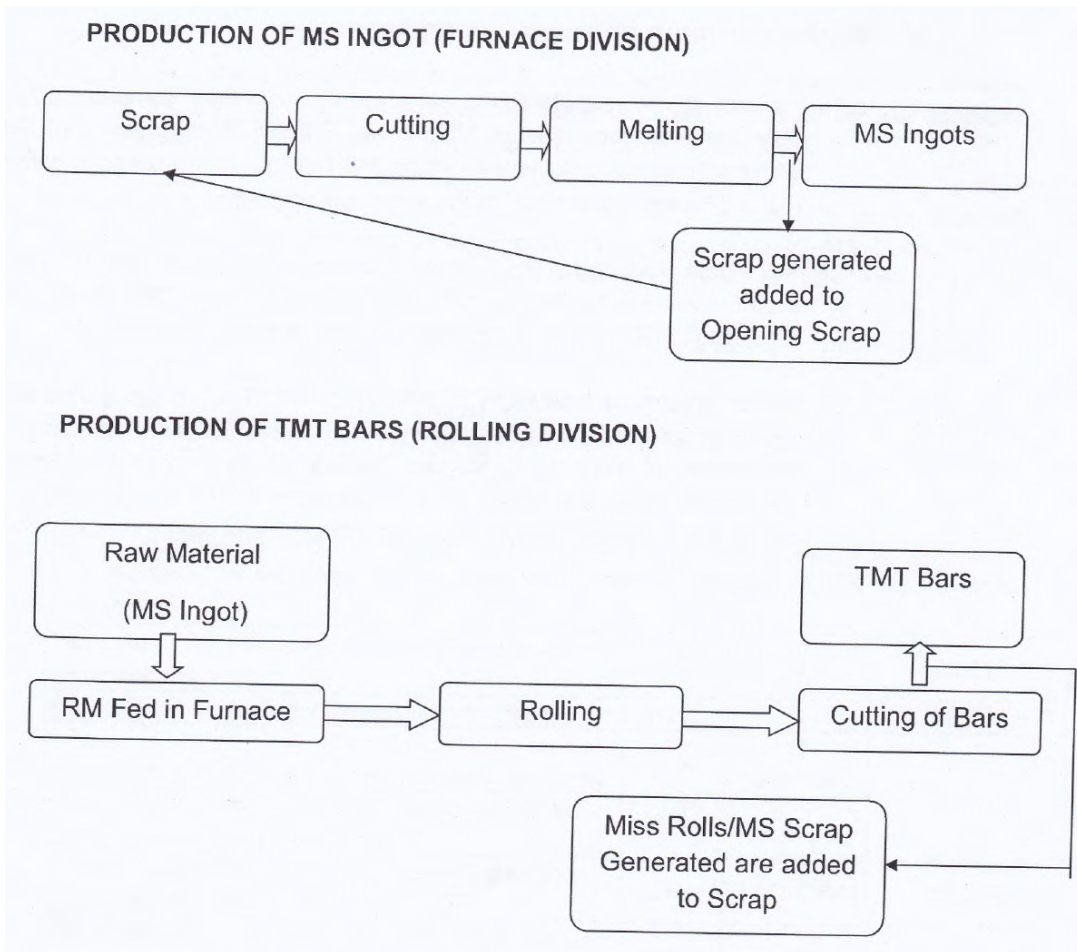
- 1.4 Thus, after the order of the Id. CIT(A) Trading Additions of Rs. 39,07,509 were sustained in the case of the assessee company. Working in this regard is as under:-

Turnover of the Assessee Company for the year under consideration	in Rs.	A	943,810,561
Gross Profit declared by the assessee company	in Rs.	B	33,844,913
Gross Profit % declared by the assessee company	in %	C [B/A*100]	3.59%
Gross Profit % applied by the Assessing Officer, during assessment proceedings	in %	D	5%
Trading Additions made by the Assessing Officer, during assessment proceedings	in Rs.	E [(D-C)*A]	13,345,615
Gross Profit % Applied by the Id. CIT(A), in the first appellate proceedings	in %	F	4%
Relief Provided by the Id. CIT(A), in the first appellate proceedings	in Rs.	G [(D-F)*A]	9,438,106
Trading additions sustained by the Id. CIT(A), for which the assessee company has preferred appeal before Hon'ble ITAT, Jaipur Bench	in Rs.	H [E-G]	3,907,509

2. SUBMISSIONS

2.1 MANUFACTURING PROCESS – IN BRIEF

- 2.1.i As part of the manufacturing process, the assessee company purchases Raw Material consisting of MS Scrap, Silicon Manganese and Silicon, which is then cut and melted to form MS Ingots. This process is carried out in the “Furnace Division” of the assessee company.
- 2.1.ii MS Ingots produced in the Furnace Division or purchased from the market is then fed into the furnace for rolling, in order to produce TMT Bars. The said production of TMT Bars is carried out in the “Rolling Division”.
- 2.1.iii In the process of production of MS Ingots, MS Scrap is generated which is again transferred for reuse within the Furnace Division. Similarly in the production of TMT bars, Missed Rolls/Miss Rolls and MS Scrap are generated, which are added back to the stock of MS scrap, maintained as part of the Furnace Division, for reusing the same in the production process.
- 2.1.iv Following is the Pictorial Diagram of the production process: -



2.2 RECORDS MAINTAINED

2.2.i TMT Bars and MS Ingots manufactured by the assessee company come under the purview of Excise Duty. As part of the excise records, assessee company maintains following registers: -

- Furnace Division**
- MS Scrap (Raw Material)
 - Runner and Riser (Raw Material)
 - Silicon Manganese (Raw Material)
 - MS Ingots (Finished Goods)

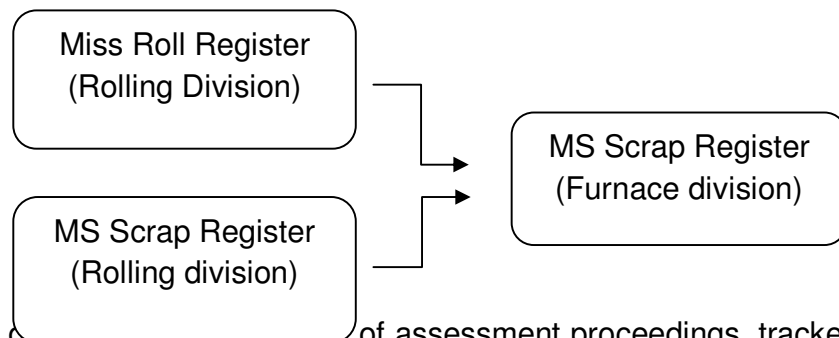
- Rolling Division**
- MS Ingot (Raw Material consisting of Purchased and In-house Production)
 - TMT Bars (Finished Goods)
 - Miss Roll (By-Product)
 - MS Scrap (Scrap generated during production of TMT Bars)

2.2.ii The registers maintained above are subject to verification of the Excise Authorities on a regular basis.

2.3 SCARP TRANSFERRED FOR RECYCLING; NOT RECORDED IN THE BOOKS – WRONG CONCLUSION DRAWN BY THE LD. AO

2.3.i MS Scrap, generated in the Furnace Division, during the process of production of MS Ingots, is transferred to the day opening stock of MS Scrap for being reused.

2.3.ii Further, by-product, in the form of Miss Rolls, generated at the time of manufacturing of TMT bars is first transferred to the Stock Register maintained for Miss Rolls. Thereafter, as per the requirement, Miss Roll is added to the stock of MS Scrap (Maintained at Furnace Division). Similarly, MS scrap generated, at this stage, is first transferred to the stock of MS Scrap maintained at the Rolling Division and thereafter, as per the requirement, is added to the stock of MS Scrap (Maintained at Furnace Division).



2.3.iii Ld. AO, during the course of assessment proceedings, tracked the output of Miss Roll with Inward in stock register of MS Scrap maintained at Rolling Division, whereas, as per the process, the same was transferred to the Stock Register of MS Scrap maintained at Furnace Department. Actual flow of material, as per the set procedure, on the specific dates, as mentioned in the AO order page 2, para 3, is as under: -

Date	Actual Flow of Miss Roll & MS Scrap (Qty in Mt Tn)					
	Outward from Miss Roll Register	PB	Outward of MS Scrap (Rolling Division)	PB	Inward In MS Scrap Register Maintained at Furnace Division	PB
21-Apr-11	67.11	1	-		67.11	9
23-Apr-11	-		68.27	2	68.27	9
8-Aug-11	-		71.52	3	71.52	10
11-Aug-11	-		52.56	3	52.56	10
9-Aug-11	66.59	6	-		66.59	10
18-Aug-11	61.57	6	-		61.57	10
18-Sep-11	-		-		0	
16-Jan-12	74.53	7	95.06	4	169.59	11
19-Mar-12	-		73.58	5	73.58	12
20-Mar-12	49.82	8	-		49.82	12

2.3.iv In this regard, a specific query was raised by the Id. AO *vide* show cause notice dated 23.02.2015 (PB 139). The assessee company in its reply dated 2.03.2015 (PB 140-145), to the show cause notice, explained the entire flow by appending the necessary extracts of the MS scrap register maintained in the Rolling Division and the Furnace Division. (PB 146-160).

2.3.v Ld. AO as well as the Id. CIT(A) did not rebut the claim of the assessee company and simply ignored the submission made by the assessee company.

2.3.vi Ld. AO as well as the Id. CIT(A), in a casual manner, erroneously compared the Stock Register for Miss Roll with Stock Register of MS Scrap (Rolling Division) considering them to be same. Details are as under: -

Date	Miss Rolls (MT)				Scrap (Rolling Division) (MT)			
	Opening Balance	Scrap Generated	Closing Balance	PB	Opening Balance	Scrap Generated	Closing Balance	PB
21-Apr-11	167.64	2.310	169.95	1	162.593	3.215	165.808	2
9-Aug-11	156.215	1.435	157.65	6	80.048	2.48	82.528	3
18-Aug-11	106.755	2.785	109.54	6	39.223	1.71	40.933	3
16-Jan-12	98.725	1.16	99.885	7	112.778	1.56	114.338	4
20-Mar-12	79.025	0.975	80	8	17.978	1.28	19.258	5

2.3.vii Ld. AO as well as the Id. CIT(A) were not able to understand the set procedure followed by the assessee company for the maintenance of stock records and could not link the flow of MS Scrap or Manufactured Goods from one Stock Register to another. This prejudiced their mind towards rejecting the books of account.

2.4 Point by point rebuttal of the contentions of the Id. AO, on the basis of which books of accounts of the assessee company were rejected are as under: -

2.4.i CONTENTION OF THE AO/CIT(A) - Purchases, sales bills and vouchers for expenses were not properly maintained by the assessee company.

(AO order Page 3, Para 3)

Assessee company could not produce some purchase bills according to the stock register.

(AO order Page 3, Para 3)

REBUTTAL OF ASSESSEE COMPANY: During the course of assessment proceedings, complete set of books of accounts, including all the vouchers were presented to the Id. AO for verification. Such fact has also been acknowledged by the Id. AO in his order at page 2, para 3. Further, vide Show Cause Notice dated 23.02.15 similar queries, as set out above, were raised by Id. AO. In reply to the show cause notice, the assessee company specifically asked the instances which led to above conclusion. It was reiterated to the Id. AO that the purchases were fully vouched, however the submissions were fully ignored by the Id. AO.

Ld. AO also ignored the fact that the assessee company, was required to maintain Books of Accounts as per the stringent

provisions of the Companies Act and Excise Law. The assessee company got its accounts Audited by an Independent Auditor who found the Books of Accounts maintained as per the relevant laws and did not give any adverse comments.

Ld. AO has nowhere given any specific finding as to which purchase, sale, expense bill was not properly maintained or was not according to the stock register. The contention of the Id. AO is simply based on conjectures and surmises.

- 2.4.ii CONTENTION OF THE AO/CIT(A): On examination of the stock register, it was noticed that on certain dates, assessee company had shown transfer of scrap, for the purpose of recycling, but such transfer was not recorded in its books. Further no particular transfer date was mentioned in the register when such material was transferred for recycling.

(AO order Page 3, Para 3.1)

REBUTTAL OF ASSESSEE COMPANY: As has been highlighted above, the Id. AO mapped the outward of Miss Roll from the Miss Roll Register with the inward in the wrong register. This clearly shows that the Id. AO did not fully understand the procedures followed by the assessee company in recording the stock of material.

- 2.4.iii CONTENTION OF THE AO/CIT(A): Some purchases bills were not found according to the stock register as the bills/vouchers of expenses were not maintained properly. (AO order Page 4, Para 3.2)

REBUTTAL OF ASSESSEE COMPANY: Ld. AO has nowhere given any specific finding as to which purchase bill was not found according to the stock register. Ld. AO has ignored the fact that the assessee company had made compliances in accordance with the Excise Law. Wherein the assessee company had to mandatorily maintain certain stock registers and file the Excise Returns. Assessee company from the period October, 2008 to August, 2013 was subjected to Audit by the Excise Department. In the said Audit also, no adverse comments with respect to the maintenance of Stock records were made by the Excise Authorities. Excise Audit Reports have been annexed in the paper book, wherein no material

mistakes, as alleged by the Id. AO, have been recorded by the Excise Department:-

S.No.	Period	PB
1	July, 2012 to August, 2013	130-131
2	July, 2011 to June, 2012	127-129
3	October, 2009 to June, 2011	132-135
4	December, 2014 to July 2016	136-139

2.4.iv CONTENTION OF THE AO/CIT(A): Assessee company did not maintain stock register for Raw Materials. The same was prepared during the course of assessment proceedings. (AO order Page 4, Para 3.3)

REBUTTAL OF ASSESSEE COMPANY: Ld. AO ignored the fact that assessee company was required to maintain the stock records, on regular basis, in compliance with the Excise Law and Companies Act. Assessee company, also filed Excise Returns on monthly basis, in which details of all the raw materials were furnished. Snapshot of such details submitted for sample months is as under:-

Material	MS Ingot	TMT Bars			Runner riser	MS Scrap	Miss Roll	Date of filing of Excise Return	
		Stock Register	Sales Return	Total					
April'11	Qty	132,330	848,180	5,560	853,740	6,295	37,813	113,560	9-May-11
	Stock Register (PB)	13	18	23		24	29	34	
	Excise Return (PB)	39		39		40	40	40	
August'11	Qty	75,110	780,590	5,560	786,150	1,285	57,693	67,455	10-Sep-11
	Stock Register (PB)	14	19	23		25	30	35	
	Excise Return (PB)	44		44		45	45	45	
September'11	Qty	94,900	664,155	5,560	669,715	4,830	30,818	59,905	10-Oct-11
	Stock Register (PB)	15	20	23		26	31	36	
	Excise Return (PB)	49		50		50	51	50	
January'12	Qty	218,480	174,305	5,560	179,865	1,920	34,518	37,010	10-Feb-12
	Stock Register (PB)	16	21	23		27	32	37	
	Excise Return (PB)	54		54		55	55	55	
March'12	Qty	124,770	929,355	0	929,355	7,935	33,018	40,525	10-Apr-12
	Stock Register (PB)	17	22	23		28	33	38	
	Excise Return (PB)	59		60		61	61	60	

If the assessee company, prepared the stock records during the assessment stage, as alleged by the Id. AO, it would have failed to furnish the above details to the Excise Authorities with such precision.

2.4.v CONTENTION OF THE AO/CIT(A): Modified daily stock register was totally different from the daily stock register produced during the course of assessment proceedings. (AO order Page 5, Para 3.4)

REBUTTAL OF ASSESSEE COMPANY: As has been highlighted above, the Id. AO misconstrued the information w.r.t different stock records of different materials submitted during the course of assessment proceedings. Id. AO did not understand the manufacturing process, followed by the assessee company, and simply tried to develop a false case for rejection of Books of Accounts.

2.5 Accounts regularly maintained in the course of business are to be taken as correct unless there are strong and sufficient reasons to indicate that they are unreliable - CIT Vs. Woodward Governor India (P) Ltd. [2009] 312 ITR 254 (SC)

2.6 REASONS FOR DECREASE IN GROSS PROFIT PERCENTAGE

2.6.i Assessee company also effectively marketed its product by offering competitive rates which is visible from the fact that the turnover increased from Rs. 57.11 crores during preceding year to Rs. 94.38 crores in the current year (in % terms, sales arose by 65.28%).

2.6.ii In the absolute terms gross profit during the year has increased from Rs. 273.57 lacs during the preceding year to Rs. 338.45 lacs in the current year. However, in percentage terms, GP has decreased from 4.79 % to 3.59%.

2.6.iii Assessee company manufactures TMT Bars, for which it needs MS scrap as raw material. Assessee company, in order to fulfill its requirements of MS Scrap, either purchases MS Scrap directly from the market or manufactures it in house in its Furnace Division.

2.6.iv Assessee company carries out the manufacturing of MS Ingots in its Furnace Division and that of TMT Bars in its Rolling Division. For both the divisions, accounting of expenses, is

done under separate heads to ascertain the per MT cost of production of MS Ingots and TMT Bars.

2.6.v Cost of Material Consumed for the Manufacturing of MS Ingots for AY 12-13 and AY 11-12 is as under:

AY 12-13

Material	Opening Stock (A)			Purchase/Transfer (B)				Closing Stock ©		Consumption (A+B-C)		
	Qty (MT)	PB	Amt.	Qty (MT)	PB	Amt.	PB	Qty (MT)	Amt.	Qty (MT)	PB	Amt.
Iron Scrap	728	94	12,093,785	11,106	94	226,768,113	122	1,023	27,722,196	10,812	94	211,139,702
Silico Maganise	2	94	104,806	178	94	9,811,038	72	35	1,964,860	145	94	7,950,984
Scrap (Captive Use)	-	-	-	567	94	10,975,481	-	-	-	567	94	10,975,481
Miss Roll (Captive)	-	-	-	419	94	10,115,735	-	-	-	419	94	10,115,735
Total	730		12,198,591	12,271		257,670,367		1,057	29,687,056	11,943		240,181,902

AY 11-12

Material	Opening Stock (A)			Purchase/Transfer (B)				Closing Stock ©		Consumption (A+B-C)		
	Qty (MT)	PB	Amt.	Qty (MT)	PB	Amt.	PB	Qty (MT)	Amt.	Qty (MT)	PB	Amt.
Iron Scrap	770	119	13,930,825	10,302	119	183,191,207	124	728	12,093,785	10,345	119	185,028,247
Silico Maganise	1	119	40,781	148	119	8,193,144	72	2	104,806	147	119	8,129,119
Scrap (Captive Use)	-	-	-	534	119	9,502,417	-	-	-	534	119	9,502,417
Miss Roll (Captive)	-	-	-	218	119	5,078,072	-	-	-	218	119	5,078,072
Total	771		13,971,606	11,202		205,964,840		730	12,198,591	11,244		207,737,855

2.6.vi Per MT cost of manufacturing of MS Ingots is as under: -

Particulars	AY 12-13	PB	AY 11-12	PB
Consumption of Raw Material (A)	240,181,902		207,737,855	
Overhead Cost				
Power & Fuel	68,227,140	-	63,604,730	-
Laboratory Exp.	117,111	121	97,205	121
Machinery Repair & Maintenance	1,609,951	121	1,674,689	121
Testing Charges	-	-	17,608	121
Consumables	6,792,658	120	6,722,436	120
Wages	1,284,587	121	1,031,696	121
Insurance Charges	15,878	121	9,883	121
Over Head Cost (B)	78,047,325	-	73,158,247	-
Total Cost of Production of MS Ingots (A + B)	318,229,227		280,896,102	
Qty Produced (MT)	10,804	94	10,598	119
Cost of Production per MT of MS Ingots	29,455	94	26,503	119

2.6 Vii Per MT Cost of purchase of MS Ingots is as under:-

Particulars	AY 2012-13				AY 2011-12			
	Qty (MT)	PB	Amt.	PB	Qty (MT)	PB	Amt.	PB
Opening Stock	151	94	4,474,374	-	60	119	1,555,534	-
Add : Purchases	16,195	94	513,598,931	125	8,425	119	232,075,917	125
Less : Closing Stock	253	94	9,140,180	-	151	119	4,474,374	-
Consumption	16,093		508,933,125		8,334		229,157,077	
Per MT Cost of Purchases	31,624				27,496			

2.6. Vii During the year under reference, the percentage of purchase of MS scrap, in the total MS Scrap requirement, was greater as compared to the in-house manufacturing, as compared to the immediately preceding year. Details are as under: -

Consumption Mix							
Consumption of MS Ingot	Qty (MT)				% of Total		Change
	AY 2012-13	PB	AY 2011-12	PB	2012-13	2011-12	
Out of Purchases	16,093	94	8,334	119	60%	44%	16%
Out of Inhouse Manufacturing	10,804	94	10,598	119	40%	56%	-16%
Total	26,897		18,933		100%	100%	

2.7 It is pertinent to note that for the AY 15-16, assessment was done u/s 143(3), wherein the books of the assessee company was accepted with any further additions being made in the assessment proceedings. (PB : 183-189)

2.8 The aforementioned factual position, including the detailed explanation of the entire manufacturing process of the assessee company, the records maintained by the company, the facts misconstrued by the Id. AO during the assessment proceedings, and a point-by-point rebuttal of the contentions raised by the Id. AO, were duly submitted to the Id. CIT(A) during the first appellate proceedings. Additionally, a comprehensive explanation, as previously outlined, was provided regarding the reasons for the decrease in the gross profit percentage of the assessee company for the year under consideration. These submissions, which were presented before the Id. CIT(A), are also included in the Paper Book from pages 189 to 206. However, despite the detailed submissions, the Id. CIT(A) completely disregarded them. Without any substantive

basis, the Id. CIT(A) simply upheld the findings of the Id. AO. Not a single point or contention raised by the assessee company was addressed in the CIT(A)'s order. Furthermore, without any justification, the Id. CIT(A) directed the Id. AO to restrict the gross profit percentage to 4% and upheld the rejection of the books of accounts.

In view of the above, factual and legal position, Id. AO and confirmed by the Id. CIT(A) was not justified in rejecting the books of the assessee company and making trading additions by applying GP rate of 4%.

Ground no. 4 : Not pressed”

6. To support the contention so raised in the written submission reliance was placed on the following evidence / records / decisions:

S.No.	Particulars	Page No.
1.	Copy of the Daily Stock Register of the assessee company	1-38
2.	Copy of the Excise returns for the following months. <ul style="list-style-type: none"> • April-2011 • August- 2011 • September- 2011 • January- 2012 • March – 2012 	39-64
3.	Copy of the audited Financial Statements along with audit report, of assessee company for the year ended 31 st March, 2012	65-95
4.	Copy of the audit report of assessee company for the year ended 31 st March, 2011	96-118
5.	Copy of the group summary of purchase accounts and direct expenses for F.Y. 2011-12	119-125
6.	Copy of the Excise Audit Report conducted by the excise department for the below mentioned periods <ul style="list-style-type: none"> • July, 2012 to August, 2013 	126-138

	<ul style="list-style-type: none"> • July, 2011 to June, 2012 • Oct. 2009 to June 2011 • December, 2014 to July 2016 	
7.	Copy of the show cause notice dated 23.02.2015	139
8.	Copy of the reply dated 2.03.2015, of above show cause notice.	140-145
9.	Copy of the extracts of the MS scrap register maintained in the Rolling Division and the Furnace Division	146-160
10.	Copy of the assessee's own assessment order for A.Y. 2011-12	161-178
11.	Copy of the Form No. 35, filed against the assessment order of A.Y. 2011-12	179-181
12.	Copy of the assessee's own assessment order for A.Y. 2015-16	182-188
13.	Copy of Submission filed before CIT(A) in the appellate proceedings	189-206

7. The Id. AR of the assessee in addition to the above written submission so far as ground no. 4 raised fairly admitted that after decision of Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd Vs CIT-1 [448 ITR 518] the ground he do not intend to press. Whereas for ground no. 1 to 3 relates to the issue of alleged mistake found by the Id. AO and thereby invoking the provision of section 145(3) of the Act. Ld. AR stated that last year turnover of the assessee was Rs. 62,42 cr., whereas for the year under consideration the same was 94.38 crore. Ld. AO has to appreciate the increase in turnover which resulted the profit margin and has

also not appreciated the manufacturing process of making TMT Bars. The Id. CIT(A) has in part considered profit margin from 5 % estimated by the Id. AO to 4 % and on the same reasons he could have accepted the book results of the assessee company. As regards the alleged difference in the stock records observed at page 3 of the order were duly reconciled at page 7 of his written submission and the reconciliation was again referred and relied upon with all the relevant details. The Id. CIT(A) should have appreciated the facts which resulted in the decrease in the profit margin in full, but he has appreciated the facts of the case only in part. Ld. AO has not rejected the books but written that the books results deserve to be rejected this shows that the explanations furnished by the assessee has not been rejected or proved to be incorrect. Thus, when the books of accounts were not rejected no addition can be made in that circumstances. As regards the estimation of profit @ 4% by the Id. CIT(A), Id. AR of the assessee vehemently argued that there are various reasons for decreasing in GP as stated in written submission para 2.6 above has not refuted and in the light of that aspect of the matter, Id. CIT(A) has granted relief to the assessee from estimation of 5% to 4% while

doing so Id. CIT(A) has not properly appreciated the fact of the case and therefore, the estimation of profit does not warranted. The Id. AR of the assessee reconciles the figure of scrap which has resulted the misconception in the mind of the AO and in fact, there is no error in the stock record maintained by the assessee the process flow is also refracted in the written submission filed herein below. The assessee is maintaining proper moment of stock and same were duly produced. The assessee also filed indirect tax records which were not disputed by that authorities. There is no defect or error so found by that authority. They also conducted the regular audit of quantitative records and production record maintained by the assessee and there is no such error found by them and therefore, rejection of books of accounts is not correct and book result be accepted.

8. Per contra, the Id. DR submitted that the Assessing Officer in detailed examined the record of the assessee and found fault in the scrap transfer records maintained by the assessee. The assessee could not furnish the purchase bill of the some of the records as observed by the Id. AO. Thus, the rejection of books accounts were

made after giving proper opportunity to the assessee and therefore rejection of books of accounts and thereby estimation of profit by Id. CIT(A) is fair and reasonable and required to be sustained.

9. We have heard the counsel for both the parties and perused the material placed on record and the orders passed by the revenue authorities. The bench noted that the ground no. 1 & 2 raised by the assessee relates to rejection of the book results of the assessee as per provision of section 145(3) of the Act. Whereas ground no. 3 relates to the estimation of profit on account of the rejection of the books of the assessee by the Id. CIT(A) @ 4% of the turnover as against 5 % done by the AO. Apropos to the estimation of profit we note from the record that facts narrated in the orders of the lower authority being not disputed by the parties and forms part of the submission reproduced in the orders of the lower authority we have not repeated to avoid the duplication. We note from the order of the Id. CIT(A) that while dealing with the appeal of the assessee has considered the submission of the assessee so far as to the defects pointed out by the Id. AO in the assessment order and were reconciled by the assessee and were

considered by the Id. CIT(A) too. But while reducing the profit estimation from 5 % to 4 % Id. CIT(A) did not deal with the cost of production being increased, product mix and volume of profit. If we considered the submission of the assessee as regards the increase in the cost of manufacturing and that of the raw material being increased as stated in para 2.6 v and 2.6 vi of the submission made by the assessee. The cost of material increased by 14 % and cost of manufacturing increased by 15 %. Thus, if we considered that increase of 15 % cost of increase in manufacturing cost the resultant effect of the profit considered by the Id. CIT(A) @ 4 % be considered to that effect the resultant effect would be profit estimated @ 4 % less 15% increase in manufacturing cost the resultant effect would be 3.4 % as against this the profit declared by the assessee @ 3.59 %. Considering that aspect of the matter we do not see any reasons to further disturb the profit already declared by the assessee @ 3.59 % . Based on this observations ground no. 3 raised by the assessee is allowed. Since we have considered the appeal of the assessee on its merits of the case the technical ground no. 1 & 2 raised by the assessee becomes infructuous.

Ground no. 4 relates to the addition made on account of delayed payment of ESI & PF for an amount of Rs. 3,91,608/-. Apropos to this ground the Id. AR of the assessee fairly admitted that considering the decision of Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd. vs. CIT-01, 2022 (10) TMI 617 (SC) he do not intend to press this ground. Based on these submission ground no. 4 raised by the assessee stands dismissed.

In terms of these observations, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 03/10/2024.

Sd/-
(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-
(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 03/10/2024

*Ganesh Kumar, Sr. PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Amar Pratap Steels Pvt. Ltd., Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward 7(2), Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA Nos. 228/JPR/2024}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar