

**IN THE INCOME-TAX APPELLATE TRIBUNAL "B" BENCH,  
MUMBAI**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER  
&  
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 2601/MUM/2012  
(A.Y. 2004-05)  
ITA No. 3970/MUM/2012  
(A.Y. 2005-06)  
ITA No. 3971/MUM/2012  
(A.Y. 2006-07)  
ITA No. 3972/MUM/2012  
(A.Y. 2007-08)  
ITA No. 3973/MUM/2012  
(A.Y. 2008-09)  
ITA No. 3974/MUM/2012  
(A.Y. 2009-10)**

M/s Nissan copper Ltd. 6/64, Navjivan Society, Lamington Road, Mumbai Central, Mumbai-400008		ACIT, Central Circle-20 Mumbai
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AABCN0105B</b>		
<b>Appellant/अपीलार्थी</b>	<b>..</b>	<b>Respondent/प्रतिवादी</b>

**ITA No. 4019/MUM/2012  
(A.Y. 2005-06)  
ITA No. 5577/MUM/2010  
(A.Y. 2006-07)  
ITA No. 4590/MUM/2012  
(A.Y. 2006-07)  
ITA No. 2239/MUM/2014  
(A.Y. 2006-07)**

ACIT, Central Circle-20 Mumbai		M/s Nissan copper Ltd. 6/64, Navjivan Society, Lamington Road, Mumbai Central, Mumabi-400008
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AABCN0105B</b>		
<b>Appellant/अपीलार्थी</b>	<b>..</b>	<b>Respondent/प्रतिवादी</b>

Appellant by :	None
Respondent by :	Shri Kailash C Kanojiya & Shri Anurag Tripathi

Date of Hearing	17.10.2024
Date of Pronouncement	29.10.2024

### **आदेश / O R D E R**

#### **PER BENCH:-**

These appeals are filed by the assessee and the revenue against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai-39 [hereinafter referred to as "CIT(A)"] dated 17.01.2014 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for Assessment years [A.Y.] , 2004-05, 2005-06, 2006-07, 2007-08 & 2008-09.

2. The assessee has raised following grounds of appeal:

#### **ITA No. 2601/Mum/2012 for AY 2004-05**

1. *On the facts and circumstances of the Appellant's case and in law the Learned CIT(A) erred in confirming the addition of Rs.11,05,307/- made by the AO on account of alleged over invoicing in purchases.*



### **ITA No. 3970/Mum/2012 for AY 2005-06**

1. *On the facts and circumstances of the Appellant's case and in law the Ld CIT (A) erred in confirming the addition of Rs 15,01,879/- on account of alleged over invoicing of purchases.*
2. *On the facts and circumstances of the Appellant's case and in law the Ld Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs 4,90,00,000/- on account of alleged shortage of stock.*
3. *On the facts and circumstances of the Appellant's case and in law the Ld CIT (A) erred in confirming the addition of Rs 77,12,720/- on account of alleged out of book cash sales.*
4. *On the facts and circumstances of the Appellant's case and in law the Ld CIT (A) erred in confirming the addition of Excise duty amounting to Rs. 12,58,517/- by invoking the provision of Sec.43B of the Income Tax Act, 1961.*
5. *On the facts and circumstances of the Appellant's case and in law the Ld CIT (A) erred in confirming the addition of 14,300/- by invoking provisions of sec.*

### **ITA No. 3971/Mum/2012 for AY 2006-07**

1. *On the facts and circumstances of the Appellant's case and in law the Ld. CIT (A) erred in confirming an addition of Rs 40,71,764/- on account of alleged over invoicing in purchases.*
2. *On the facts and circumstances of the Appellant's case and in law the Ld. CIT (A) erred in confirming an addition of Rs 4,21,09,846/- on account of estimated gross profit @ 8% on account of alleged cost of material imported.*
3. *On the facts and circumstances of the Appellant's case and in law the Learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance of Rs. 8,80,93,799/- by invoking the provisions of Sec.40 A(3).*
4. *On the facts and circumstances of the Appellant's case and in law the Learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance of Cenvat credit on account of excise duty amounting to Rs. 8,59,04,087/- by invoking the provisions of Sec.43B of the Income Tax Act, 1961.*
5. *On the facts and circumstances of the Appellant's case and in law the Learned Commissioner of Income Tax (Appeals) erred in confirming an addition of Rs 15,16,560/- on account of alleged excess stock.*
6. *On the facts and circumstances of the Appellant's case and in law the Learned Commissioner of Income Tax (Appeals) erred in confirming an addition of Rs 1,51,46,495/- on account of alleged excess stock of finished goods.*
7. *On the facts and circumstances of the Appellant's case and in law the Learned Commissioner of Income Tax (Appeals) erred in confirming an addition of Rs 14,75,263/- on account of alleged over invoicing in purchases.”*

### **ITA No. 3972/Mum/2012 for AY 2007-08**

1. *On the facts and circumstances of the Appellant's case and in law the Ld CIT (A) erred in confirming an addition of Rs 2,69,00,298/- on account of alleged over invoicing in purchases.*



2. *On the facts and circumstances of the Appellant's case and in law the Ld CIT (A) erred in confirming an addition of Rs 1,42,24,164/- on account of alleged over invoicing in purchases.*
3. *On the facts and circumstances of the Appellant's case and in law the Ld CIT (A) erred in confirming an addition of Rs 18,08,648/- on account of alleged over invoicing in purchases.*
4. *The appellant craves leave to add, alter, amend and/or rescind any grounds of appeal during the course of hearing.*

### **ITA No. 3973/Mum/2012 for AY 2008-09**

- “1. *On the facts and circumstances of the Appellant's case and in law the Ld. CIT (A) erred in confirming an addition of Rs 4,04,66,417/- on account of alleged over invoicing in purchases.*
2. *On the facts and circumstances of the Appellant's case and in law the Ld. CIT (A) erred in confirming an addition of Rs 14,96,791/- on account of alleged over invoicing in purchases.*
3. *On the facts and circumstances of the Appellant's case and in law the Ld. CIT (A) erred in confirming an addition of Rs 42,42,517/- on account of alleged over invoicing in purchases.*
4. *The appellant craves leave to add, alter, amend and/or rescind any grounds of appeal during the course of hearing.”*

### **ITA No. 3974/Mum/2012 for AY 2009-10**

- “1. *On the facts and circumstances of the Appellant's case and in law the Ld. CIT (A) erred in confirming an addition of Rs 7,66,718/- on account of alleged over invoicing in purchases.*
2. *On the facts and circumstances of the Appellant's case and in law the Ld. CIT (A) erred in confirming an addition of Rs 5,48,952/- on account of alleged over invoicing in purchases.*
3. *On the facts and circumstances of the Appellant's case and in law the Ld. CIT (A) erred in confirming an addition of Rs 5,00,000/- on account of alleged unexplained transaction as per Para 8.3 of the impugned order.*
4. *The appellant craves leave to add, alter, amend and/or rescind any grounds of appeal during the course of hearing.”*

3. The Revenue has also raised following grounds of appeal:

### **ITA No. 4019/Mum/2012 for AY 2005-06**

*"On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in directing the Assessing Officer to grant the additional deduction u/s 801B(4) of the I.T. Act in respect of the additions/disallowance made by the Assessing Officer which*



has the effect of increasing the profits and gains of the undertaking eligible for deduction u/s 80IB (4)."

### **ITA No. 5577/Mum/2010 for AY 2006-07**

- a. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in allowing assessee's claim for deduction u/s. 801B when the assessee had not fulfilled the condition of commencement of manufacturing during the period beginning on 01.04.1993 and ending on 31.3.2004.*
- b. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in deleting addition made by the AO when the so called manufacturing activity had commenced illegally prior to obtaining of the factory license.*
- c. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in allowing deduction u/s. 801B by holding that obtaining factory license is not a condition precedent for claiming deduction u/s. 80IB.*
- d. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in deleting addition of Rs. 15,16,560/- made by the AO on account of unrecorded purchases detected by the Central Excise department during search operation.*
- e. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in deleting addition of Rs. 127,92,920/- & Rs. 859,04,087/- made on account of bogus purchases detected by the Central Excise department during search operation.*
- f. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in deleting addition of Rs. 151,46,465/- made on account of unrecorded sales detected by the Central Excise department during search operation.*
- g. *On the facts and in the circumstances of the case and in, law, the Id. CIT(A) erred in deleting addition of Rs. 21,47,602/- made on account of commission paid for obtaining bogus transport bills.*
2. *The Appellant craves to leave to add, to amend and / or to alter any of the grounds of appeal, if need best*
3. *The appellant, therefore, prays that on the grounds stated above, the order of the CIT(A)-39, Mumbai may be set aside and that of the Assessing Officer restored."*

### **ITA No. 4590/Mum/2012 for AY 2006-07**

1. *"On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in directing the Assessing Officer to delete the addition of Rs.21,47,603/- on account of commission paid for obtaining bogus transport bills even though the same did not pertain to eligible business u/s.80IB(4)."*



## ITA No. 2239/Mum/2014 for AY 2006-07

1. *"Whether on the facts and circumstances of the case, the Id. CIT(A) has erred in deleting penalty of Rs.3,30,426/- levied u/s.271(1)(c) when the assessee has wrongly claimed deduction u/s.801B on non-801B income of Rs.10,79,823/-, thereby furnishing inaccurate particulars of his income leading to concealment of income."*
  2. *"Whether on the facts and circumstances of the case, the Id. CIT(A) has erred in stating that the A.O. has not initiated penalty proceedings u/s.271(1)(c) while making the disallowance in the assessment order, when in fact the same has been mentioned on Page 19 of the assessment order."*
  3. *The Appellant craves to leave to add, to amend and / or to alter any of the grounds of appeal, if need be.*
  4. *The appellant, therefore, prays that on the grounds stated above, the order of the CIT(A)-39, Mumbai may be set aside and that of the Assessing Officer restored.*
4. At the outset, it was noticed that these appeals have been fixed for hearing since 2011 on numerous occasions. On 09.05.2017 when the case came up for hearing, it was noted by the Hon'ble Bench that the assessee had been seeking repeated adjournment and that cost was also imposed on the assessee on 09.03.2015. The case was adjourned for final time on assessee's request to 11.05.2017. On 11.05.2017 the assessee moved an application for adjournment yet again. The Hon'ble Bench imposed cost on the assessee with the following remarks:

*"These are old appeals filed in the year 2010. It was made clear to the assessee counsel appearing on 09-05-2017 in the open court that this is last opportunity and no more adjournment shall be granted and the matter was fixed for hearing for today. Despite the directions of the bench on 09-05-2017 in the open court, the assessee has again moved an application for adjournment of today's hearing. We are constrained to impose cost of Rs 5000/- each with respect to each of the appeal (10 appeals in all) and the assessee is directed to deposit Rs.50,000/- (Rs Fifty Thousand only) as cost by depositing to 'Prime Minister National Relief Fund' on or before 15-06-2017 and submit proof of the same before the Registry and the AO. The Registry is directed to serve copies of this order to both the parties. The matter is now adjourned to 14-09-2017. We order accordingly."*



5. However, no compliance was made thereafter. Subsequently, when the case was fixed 28.02.2018, the assessee sought another adjournment and final opportunity was granted, after making the following order by the Hon'ble Bench:

*“Considering the overall circumstances, assessee was directed to ensure that on the next date of hearing, the appeals are proceeded with and that no further adjournments shall be granted without any strong unavoidable reasons. In the meanwhile, we deem it fit and proper to impose costs of Rs.10,000/- each with respect to each appeal (10 appeals in all) and the assessee is directed to deposit a sum of Rs.1,00,000/- as costs in favour of 'Prime Minister's Relief Fund' on or before 15.03.2018 and submit the proof of the same before the Registry and the Assessing Officer. The Registry is directed to serve the copy of this interim order to both the parties and the appeals are adjourned for hearing on 18.04.2018 with the hope that the assessee will discipline his affairs and not seek any further adjournments. Ordered accordingly.”*

6. Subsequently, vide letter dated 16.07.2019, the Ld. AR submitted that the business of the company had been closed and the assets had been taken over by the State Bank of India for auction and sale. Accordingly, they withdrew their letter authority. The appeals have been repeatedly fixed thereafter. On the last date of hearing on 17.10.2024, none appeared on behalf of the assessee. It was brought to the notice of the bench by the Ld. DR that the company is under liquidation. In this regard, order of the Hon'ble High Court of Gujarat was perused from which it is clear that an official liquidator has been appointed by the Hon'ble High Court and the company is undergoing liquidation.



7. In view of above facts, since the company is in liquidation and no compliance or representation is made on behalf of the assessee company or the official liquidator, there is no use of keeping these appeals pending. Therefore, we deem it proper to dismiss the appeals of the assessee as well as of the revenue with the liberty to both the parties to request for recall of the order if there is any change in facts and circumstances of the case subsequently.

8. In the result, the all 10 appeals of the assessee and the revenue are hereby dismissed.

Order pronounced in the open court on 29.10.2024.

**Sd/-**

**BEENA PILLAI**

**(न्यायिक सदस्य/JUDICIAL MEMBER)**

**Sd/-**

**RENU JAUHRI**

**(लेखाकार सदस्य/ACCOUNTANT MEMBER)**

Place: मुंबई/Mumbai

दिनांक /Date 29.10.2024

अनिकेत सिंह राजपूत/ स्टेनो

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai



5. गार्ड फाईल / Guard file.

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आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण/ ITAT, Bench,  
Mumbai.

