

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH: BANGALORE**

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT  
AND  
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No.1062/Bang/2024
Assessment year: 2013-14

Sri Kumaraswamy Mineral Exports Private Ltd., No.61, Cunningham Cross Road, Vasanth Nagar, Bengaluru - 560 052. <b>PAN: AAQCS 4798A</b>	Vs.	The Deputy Commissioner of Income Tax, Central Circle 1(1), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri V. Chandrashekar & Shri Narendra Sharma, Advocates
Respondent by	:	Ms. Neera Malhotra, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	09.04.2025
Date of Pronouncement	:	25.04.2025

**ORDER**

*Per Prashant Maharishi, Vice President*

1. This appeal is filed by Sri Kumaraswamy Mineral Exports Private Ltd. (the assessee/appellant) for the assessment year 2013-14 against the appellate order passed by the Commissioner of Income Tax(Appeals)-11, Bangalore [Id. CIT(A)] dated 30.3.2024 wherein the appeal of the assessee

against the Assessment order dated 24/08/2021 passed u/s. 153A of the Income-tax Act, 1961 [the Act] by the DCIT, Central Circle 1(1), Bangalore [Id. AO], was dismissed.

2. Aggrieved, assessee is in appeal before us and has raised the following grounds :-

"1. The appellate order passed by the learned Commissioner of Income-tax [Appeals]-11, Bengaluru, passed under Section 250 of the Act dated 30/03/2024, in so far as it is against the Appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.

2. The appellant denies himself liable to be assessed more than returned income on the facts and circumstance, the case. The additions made are all unsustainable in law and contrary to the material on record and consequently liable to be deleted in full or substantially reduced as not in accordance with the scheme of the income tax act.

3. The appellant denies itself liable to be assessed under section 153A of the Act under the impugned order of assessment of assessment passed on the ground: -

[i]. That the search initiated in the case of the appellant is illegal and ultra vires the provisions of section 132[1][a], [b] Et [c] of the Act; and

[ii]. That the search is conducted not on the basis of any prior information or material inducing any belief but purely on the suspicion and therefore, the action under section 132[2] is bad in law [224 ITR 19 (SC)] and consequent assessment under section 153A is null and void-ab-inito on the parity of the ratio of the decision of the Hon'ble Apex Court in the case of Ajith Jain, reported in 260 ITR 80.

[iii]. That the learned authorities have not discharged the burden of proving that there is a valid search under section 132 [1] [a], [b] Et [c] of the Act, and consequently the assumption of jurisdiction to make an

assessment under section 153A of the Act is untenable in law.

4. The learned Commissioner of Income-tax [Appeals], failed to appreciate that a valid search is a sine qua non for making a valid assessment under section 153A of the Act on the parity of the ratio of the decision of the Hon'ble Apex Court in the case of Ajit Jain, reported in 260 ITR 80, on the facts and circumstances of the case.

5. The learned Commissioner of Income-tax [Appeals] failed to appreciate that the learned assessing officer has failed to record the satisfaction regarding an inference of liability before the issuance of notice under section 153A of the Act and consequently the assessment framed on an invalid procedure is bad in law and liable to be cancelled, on the facts and circumstances of the case.

6. The learned Commissioner of Income-tax [Appeals] failed to appreciate that, the notice issued under section 153A of the Act suffers from material irregularity thus the notice issued is bad in law, and consequently order of assessment passed on an invalid notice does not have legs to stand and requires to be cancelled, on the facts and circumstances of the case.

7. Without prejudice to the above, the Commissioner of Income Tax [Appeals] failed to appreciate that the additions made by the learned assessing officer were not based on incriminating material found during course of search and the additions made in the impugned order of assessment is not emanating out of the seized materials, thus the impugned additions made in the impugned order of assessment passed are not sustainable and requires to be deleted, on the facts and circumstances of the case.

8. The learned Commissioner of Income-tax [Appeals] failed to appreciate that mere admission in the statement recorded under section 132 [4] of the Act by the Director of the Appellant Company during the search which was later retracted, cannot form the basis of addition, more so when the director of the appellant company had admitted the additional income at the time of search on a mistaken notion of facts and law and

thus, the income assessed on that basis is unjustified and requires to be deleted, on the facts and circumstances of the case.

9. Without prejudice, the Appellant denies itself liable to be assessed on a total income of Rs.100,99,35,420/- determined by the learned assessing officer and confirmed by the learned Commissioner of Income-tax [Appeals], as against the NIL income returned by the appellant, on the facts and circumstances of the case.

10. The learned Commissioner of Income Tax [Appeals] is not justified in confirming the addition made by the learned assessing officer amounting to Rs. 68,66,77,426/- on account of alleged valuation of closing stock of sub-grade Iron Ore as undisclosed stock, on the facts and circumstances of the case.

11. The learned Commissioner of Income-tax [Appeals] is not justified in denying the benefit of a favorable judgement, owing to the fact that the appellant has not disclosed quantitative details in its tax audit, on the facts and circumstances of the case.

12. The learned Commissioner of Income-tax [Appeals] and the learned assessing officer were not justified in making additions on account of alleged valuation of closing stock of sub-grade Iron Ore as undisclosed stock, without understanding the accounting principles required to be followed in accordance with law, on the facts and circumstances of the case.

13. The learned Commissioner of Income-tax [Appeals] and the learned assessing officer were not justified in revaluing the closing stock, without appreciating the fact that the addition relating to valuation of sub grade iron ore was considered and assessed in earlier scrutiny assessment proceedings for the Assessment Year 2009-10 and valuing the very same stock for the impugned assessment year would amount to double taxation, on the facts and circumstances of the case.

14. Without prejudice, the learned authorities were not justified in valuing the sub-grade iron ore at Rs. 622/- per tonne which is far excessive and the same

requires to be reduced substantially on the facts and circumstances of the case.

15. Without prejudice to the right to seek waiver as per the parity of reasoning of the decision of the Hon'ble Apex Court in the case of Karanvir Singh 349 ITR 692, the Appellant denies itself liable to be charged to interest under section 234 A, 234 B & 234 C of the Act on the facts and circumstances of the case. Further the levy of interest under section 234 A, 234 B & 234 C of the Act is also bad in law as the period, rate, quantum and method of calculation adopted on which interest is levied are all not discernible and are wrong facts of the case.

16. The Appellant craves leave of this Hon'ble Tribunal to add, alter, substitute and delete any or all of the grounds of appeal urged above.

17. For the above and other grounds to be urged during the hearing of the appeal the Appellant prays that the appeal be allowed in the interest of equity and justice."

3. Facts gathered from the orders of lower authorities show that Assessee is a private limited company engaged in the business of mining and extraction of iron ore, filed its return of income on 30.9.2013 showing taxable income of Rs. Nil. Learned AO picked up this return of income for scrutiny and necessary notices were issued. Issue in that assessment was that assessee has not disclosed sale of Iron ore material sold through e auction amounting to Rs. 28,23,77,217/-. Assessment order u/s 143 (3) of the Act was passed on 31/03/2016 assessing the total income at Rs. 31,67,22,990/-.
4. Subsequently, Search & seizure action were carried out on 19.11.2018, pursuant to that, case of assessee was centralized and notice u/s. 153A of the Act was issued on 23.4.2020.

Assessee reiterated the return at Rs. Nil on 7.9.2020 and consequent to that, notice u/s. 142(1) was issued on 19.2.2021 and notice u/s. 143(2) was issued on 29.9.2020.

5. During search, documents were found and seized as per Annexure 01 page 277 to 280 of Annexure 1 which contains 2 Mahazars dated 21.8.2017 and 5.1.2018 drawn by office of the Deputy Director of Department of Mines & Geology (DMG), Hospet where in stock of sub grade stock of iron ore lying at the B Block of the mines of assessee were quantified. As during 2011, mining of iron ore was banned in Karnataka, Hon'ble Supreme Court has set up a Monitoring Committee and directed to sell the iron ore lying at the various stock yards.
6. A statement u/s. 132(4) of the Managing Director of assessee was recorded, seized material was confronted, and explanation was asked about disclosure of the above stock. It was admitted by the MD that the subgrade stock is not disclosed in the books of account and offered to disclose the same as closing stock at value at the cost of production for AY 2018-19. This statement was recorded on 21.11.2018.
7. Relevant questions and their replies are as under: -

" Q. 17. I am showing the pages from 277 – 280 of the inventorised material marked as A/SKEMPL/01\*found and seized from the office premises of M//s Sri Kumaraswamy mineral exports private limited located at No. – 35, park enclave, Park Road, Tasker Town, Shivajinagar, Bengaluru on 21/11/2018. Please explain the content of the same.

Ans. I have gone through the pages 277 – 280 of the inventoried material A/SKMPEL/01\* and confirmed

that the same is found and seized from the office premises. The details of the same are as below:-

from pages 277 – 280 having details in respect of stock mahazar of the subgrade ore found in our Mines at Sandur. It is done by the office of the deputy director of mines and geologic, Hospet, Ballari (Bellary) district dated 5/1/2018. It is mentioned that approximately 496375 metric tons of iron ore is available in the dumps as per the preliminary mahazar done by the office of the deputy director of mines and geology.

Pages from 279 – 280 is mahazar dated 21/8/2017 done by the office of the deputy director of mines and geology, Hospet. The content of the Mazar dated 21/8/2017 mentions that the stock available in the mine after the E auctioning has to be surveyed and reported as per the direction of the director of mines and geology Karnataka as per the Supreme Court order 29/7/2011, banning the mining operation.

Q. 18 please explain whether the quantity and value of this old stock of 496,375 metric tons is shown in the books of the accounts?

Ans. I confirm that the quantity and value of this old stock of 496375 metric tonnage is not shown in the books of accounts, and I agree to offer the same for the financial year 2017 – 18 as it is verified and found by the Department of mines in the year 2017 – 18.

Q. 19 please explain what the value of the stocks will be as on date?

Ans:- the stock is valued as per the E auction price which is sold by the monitoring committee in the auction. As per the old stock of iron ore sold on 4/9/2018 price is ₹ 1280 per metric Ton. The monitoring committee will deduct special purpose vehicle duties of 15% and district mineral fund and National mineral development fund of 5% on the selling price. The cost of the iron ore will be ₹ 1 2809-20% (i.e.) 1280-256 is equal to ₹ 1024 per metric ton. The total cost of production at our cost price of

the same will be ₹ 622/-. Accordingly, the total value of the undisclosed stock is ₹ 308,745,250/-. In this regard I voluntarily agree to offer the amount of ₹ 308,745,250/- is the value of closing stock banned Hematite Quartz which would henceforth be added to the revised balance sheet of the company.

Q. 20 please explain why the value of the stock of ₹ 308,745,250/- will not be considered as an income for the financial year 2017 - 18.

Ans:- yes, as I agree earlier, I want to offer the same voluntarily as an income of the financial year 2017 - 18."

8. Assessee retracted the statement on 1.4.2019. The reason for retraction was that sub grade iron ore was considered as waste, same is not saleable, it is valued at lower of cost or net realizable value., net realizable value is nil, therefore, no Closing stock would be valued and therefore disclosure is incorrect.
9. The Id. AO issued notice u/s. 133(6) to the Office of the Dy. Director, DMG to verify the unsold stock from mining banned period to till date. Information was received and shared with the assessee. As per the information it was found that on 31/3/2012 the assessee was having a closing balance of 16,92,672 metric ton and as on 31/3/2013 the assessee was having the closing stock of 11,03,983 metric tons. It was also apparent that during the year assessee has sold 5,68,000 metric ton.
10. Thus, AY 2013-14 was subjected to assessment u/s 153A of the act as stock was mentioned for that AY.

11. Based on the above information the assessee was asked to explain that whether the assessee has disclosed the subgrade iron ore as closing stock in the books of account of the respective assessment years or not.
12. Assessee furnished the reply wherein it submitted quantitative details showing closing balance as on 29/7/2011, sales as on 31/3/2012, closing balance as on 31/3/2012, sales as on 31/3/2013 and a further closing balance as on 31/3/2013. Similar details were also furnished for all the subsequent financial years up to 31/3/2019.
13. The assessee was issued a show cause notice that why the closing stock of subgrade iron ore disclosed in the return of Geological department for the respective assessment years should not be added to the income of the assessee for respective assessment years.
14. The assessee replied that :-
  - i. the stock was not mined in the current year but was part of the waste product from 1994 and not saleable.
  - ii. The stock of 496375 metric tons (MT) of iron ore found in seized document Annx. 01 page 277-280 based on Mahazar report dated 5.1.2018 represents mineral rejects and waste not saleable. As the net realisable value is Rs.Nil as per Accounting Standard 2, same is valued lower of cost or net realisable value, hence valuation is Nil.

- iii. Sub grade material did not have much market of the buyer and therefore not put up for e-auction.
  - iv. As per order of Hon'ble Supreme Court dated 29.7.2011 all the mining activities in Karnataka had stopped. Therefore, this stock were quantified from all the mines in Karnataka. Subsequently permission of the Hon'ble Supreme Court was taken to sell all these stocks. At that time, the assessee has disclosed the stock. Inspection was also conducted. Based on this, assessee has disclosed Rs.39740979 towards stock of sub grade iron ore, which is valued at the cost of loading, unloading and transportation from dumpyard to stock yard.
  - v. Assessee also explained that according to Accounting Standard inventory has to be valued at lower of cost or net realizable value and not at the market value.
  - vi. Assessee has already valued the inventory as stated above and therefore addition cannot be made.
15. The Id. AO considered the mining ban in Karnataka and subsequent decision of the Hon'ble Supreme Court and held that information was received from the Dy. Director, DMG and if not for the mining ban and subsequent sale through the Monitoring Committee, the sale of sub grade iron ore would not be disclosed by the miner and thereby generating undisclosed income. He further held that quantity of 496375 MT of sub grade iron ore was determined as per Mahazar drawn by Dy. Director and same was accounted for stock in FY 2019-20 and sold at e-auction

subsequently. He held that assessee has accounted for closing stock of such iron ore as Mahazar found and seized during the search proceedings. This proves that the assessee has not accounted for sub grade iron ore lying at its stock yard after the ban of mining. Hence the stock of sub grade iron ore is undisclosed. The Id. AO based on IBM reports, computed the quantitative details from AY 2013-14 to 2018-19 in para 12 of the assessment order. He found that assessee had sub grade iron ore of 1692672 MT as on 31.3.2012 and in FY 2012-13 the assessee has sold 588689 MT, resulting in closing stock as on 31st of March 2013 of 11,03,983 metric ton. As the assessee has sold 588 689 metric tons, the assessee cannot claim that net realizable value of above material is NIL. He held that the assessee has not disclosed the opening stock of sub grade iron ore of 1692672 MT as at 31/3/2012 and closing stock of 1103983 MT as at 31/3/2013 in the return of income filed by the assessee. Therefore, as the assessee has not disclosed the closing stock of 1103983 MT and iron ore is sold at Rs.1280/- per MT, having cost of production of Rs.622/- per MT, he made an addition of Rs.68,66,77,426/- to the total income of assessee being 1103983 MT of sub grade iron ore which is valued at cost of production of Rs.622/- per MT.

16. Consequently, assessment order for AY 2013-14 u/s. 153A of the Act was passed on 24.8.2021 determining total income of Rs.68,66,77,426/-.
17. The assessee aggrieved with the same, preferred appeal before the Id. CIT (A). The assessee challenged the validity of search,

validity of the addition and also the merits of the addition. Assessee also raised several other grounds on technical issues.

- i. In ground No.4, assessee challenged that addition has been made in the hands of assessee in absence of any incriminating material found during the course of search for the relevant assessment year i.e. for Ay 2013-14. Amongst other grounds, the assessee challenged the same relying on the decision of the Hon'ble Delhi High Court in the case of CIT v Kabul Chawla and the decision of the Hon'ble Supreme Court in the case of PCIT v. Abhisar Buildwell P. Ltd., 149 taxmann.com 399. The Id. CIT(A) held that this ground related to issuance of notice u/s. 153A in absence of incriminating material resulting from the search is not tenable. He held that once the search is conducted u/s. 132 of the Act, issuance of notice u/s. 153A is mandatory, which will result into an assessment, hence he dismissed this ground.
- ii. On merits of the addition, he held that as per financial statement submitted by the assessee for all the years prior to PY 2012-13 there is no entry in the annual report regarding quantity of iron ore and sub grade iron ore. Even in the tax audit report, the detail of stock is not mentioned. He further noted that there is no mention in the notes to the accounts that sub grade iron ore was excavated in earlier years, it is not saleable, He therefore referred to the annual report para 16.1 wherein it is mentioned that

the assessee has not maintained stock register and during the appellate proceedings it was also not produced, the information was gathered during the course of search. Now assessee cannot claim that the stock of sub grade iron ore in the financial statement is not shown because its value is Rs. Nil. He further stated that the MD of the assessee in a statement in search has arrived at a value of Rs. 622/- per MT and considering the same, the AO has made an addition of Rs.68.62 crores. Therefore, addition made on the basis of statement made u/s. 132(4) of the Act is justified. Accordingly, he dismissed ground nos. 6 to 8 of the appeal.

- iii. He also rejected the retraction of the statement relying upon Accounting Standard 2.
- iv. Assessee also raised an issue that if the addition is to be made, the opening stock for the year is 16,92,672 MT , out of which 588689 MT is sold during the year and thereby resultant closing stock is 11,03,983 MT. Assessee has already recorded the sale value of 588,689 MT in the Profit & Loss account. Therefore, if the Id. AO is making addition of the value of the closing stock, assessee must also get benefit of the opening stock of 16,92,672 MT. Therefore, addition of closing stock alone without giving credit for opening stock is not proper. The assessee relied on the decision of the coordinate Bench in ITA No.1538 & 1539/2018 dated 22.2.2022.

- v. The Id. CIT(A) distinguished the above judicial precedent holding that in that case, the quantitative details shown in the financial as well as tax audit report and stock of dump working was not at all valued. In the case of assessee, quantitative details are not available as assessee did not maintain stock register and quantitative details are also not available in the tax audit report. He called for a remand report from the AO on this issue which was submitted on 26.3.2024 and based on the above that as assessee has not disclosed quantitative stock in the annual accounts as well as in the tax audit report, he dismissed this argument. Thus, appeal filed by the assessee was dismissed.
18. Assessee is aggrieved with the same and has preferred this appeal. Assessee filed a paperbook containing 276 pages. The Id. AR referred to grounds of appeal and submitted that:-
19. Ground nos. 1 & 2 are general in nature. He submits that grounds 3 to 5 are inter-connected, challenging the assumption of jurisdiction, validity of search. Ground No.6 relates to the issue of notice u/s. 153C of the Act.
20. Contesting ground no.7 challenging the assessment u/s. 153A of the Act and additions made by the Id. AO which was not based on incriminating material found during search relevant to the impugned assessment year, He submitted that search took place on 19.11.2018 and during the search material found was stock statement of FY 2017-18. He specifically referred to paragraph

number 5 of the assessment order where the learned assessing officer has issued a notice under section 133 (6) to the office of the deputy director in order to ascertain the unsold stock of iron ore lying at the mines after mining ban period to till to date. He categorically submits that material for AY 2013-14 was not at all found during search but was collected by the Id AO during assessment proceedings by invoking powers of section 133 (6) of the Act. He referred to the statement u/s. 132(4) of the Act of Shri Santesh Gureddi dated 21.11.2018 and referred to Q.No.17 wherein page 277-280 of Annx. 1 is referred to. He also submitted that based on that paper in answer to Q.No.18, the MD has disclosed the quantity of 496375 MT for AY 2017-18 as verified and found by the Dept. of Mines at the value of Rs.622/- per MT, the disclosure was made of Rs.30,87,45,250/-. This is evident from the Q.Nos.19 & 20. Therefore, according to him, material was found for AY 2018-19 and not for AY 2013-14.

21. He submitted that Assessee has retracted the statement on 1.4.2019 by making submission to the Dy. Director of Income Tax, Bengaluru (Bengaluru). He referred to the notice u/s. 142(1) dated 19.2.2021 placed at page 87 onwards of the PB. He referred to para 2 and stated that based on Mahazar at pg. 277-280 for FY 2017-18, AO obtained further information during the course of assessment proceedings from DMG of the total quantity of sub grade iron ore as on the date of mining ban and at the end of each financial year. Based on such information received, the Id. AO found that as on 31.3.2012, the closing stock of SGROM was 1692672 MT and stock as on 31.3.2013 was 11,03,983 MT. For the year ended on 31.3.2013 there was

sales of 568000 MT. Therefore, this was the material obtained during assessment proceedings by the Id. AO as per notice u/s. 142(1) of the Act and not based on any material found during the course of search. He further relied upon decision of Hon'ble Supreme Court in the case of Abhisar Buildwell P. Ltd. 454 ITR 212 (SC) and submitted that the addition in the concluded assessment can be made on the basis of incriminating material found during the course of search relevant to that assessment year. If during search no incriminating material is found, then the assessment u/s. 153A of the Act to be made at already assessed income or returned income accepted as it is. Therefore, in the absence of incriminating material, the AO could not have disturbed the assessed income of the assessee.

22. According to ground No.10 on the merits of the addition, he submitted that closing stock is an inventory out of production made in earlier years and is not produced during this year. He also submitted that even the material collected by the assessing officer clearly shows that there was an opening stock during the year, part of which is sold during the year and resultant quantity of stock is in balance. He referred to the assessment order para 12 wherein the AO himself has stated that the opening balance of sub grade iron ore for AY 2013-14 was 1692672 MT. Therefore, it was the closing stock for FY 2011-12. This is an accepted fact by the Id. AO based on inventory obtained from DGM. He further submitted that in answer to Q. 17 & 18 of the statement dated 21.11.2018 and consequent retraction of the MD, the value of the stock should have been at Rs. NIL only as per Accounting Standard 2. He submits that the cost of

producing the material or net is realizable value, least of the two is the rate at which closing stock is to be valued. In this case realizable value was Rs.NIL and therefore no valuation of closing stock was made in the books of account, it was further submitted that for the impugned AY, opening stock of 1692672 MT and closing stock of 1103983 MT was determined after recording sale of 588689 MT which is credited to the Profit & Loss account. If the AO finds that there is a closing stock at the end of the year, then set off also be given to the assessee of the opening stock. In absence of any production during the year, the opening stock is higher than the closing stock and therefore no addition could have been made during the year.

23. The Id. AR stated that the Id. AO has made addition on account of 1403983 MT of the material valued at Rs.622/- per MT resulting into addition of Rs. 68.66 crores of quantitative details obtained from the mining department. He referred to page 276 of PB wherein the summary of inventory obtained from the Mining Dept. from AY 2009-10 till 2013-14 were obtained. He submits that in AY 2009-10 assessee was assessed in the hands of erstwhile partnership firm wherein identical issues arose and valuation of closing stock of sub grade dumps for that year was made and addition of Rs.4,55,80,400 was made. Rate of valuation was taken at Rs.60 / per MT. He referred to the assessment order u/s. 143(3) dated 28.12.2011 for the AY 2009-10. The Id AO also valued the quantity of 1992860 MT taken in that AY and the chart placed at page 276 of PB.

24. He specifically referred to the order of the Id. CIT(A) and submitted that the Id. CIT(A) has not considered the ground of appeal in proper perspective that in absence of any incriminating material found during search for the relevant year, no addition could have been made. The Id. CIT(A) has held that order u/s. 153A is to be necessarily passed in case of search.
25. With respect to additions on the merits, he submits that he Id. CIT(A) failed to consider that there is no production during the year, opening stock is pertaining to the earlier years and if addition is to be made to the closing stock, the credit of the opening stock for the year should have been granted to the assessee.
26. According to him, the addition cannot survive without any incriminating material or even otherwise on merits.
27. The Id. CIT(DR) vehemently supported the orders of the Id. lower authorities. She submitted that:-
  - i. Assessee has disclosed income for AY 2018-19 arising from undisclosed closing stock in the statement of the MD of the company made u/s. 132(4) of the Act and therefore it is having evidentiary value. The retraction made by the assessee is merely an afterthought and has rightly been rejected by the Id. CIT(A).
  - ii. It was further stated that even if retraction is valid, lack of merit in the retraction makes it irrelevant. She referred to the order of the Id. CIT(A) and relied upon the decision of Hon'ble Delhi High Court in the case of CIT v. Chetan Das Lachman Das, 25 taxmann.com 227 (Del).

With respect to self-serving retraction without evidence not admissible, she relied upon the decision of Hon'ble Kerala High Court in CIT v. O. Abdul Razak, 20 taxmann.com 48. She further referred to IBM Circular referred to by the Id. CIT(A) at para 6.4.2 to 6.4.4 submitting that it is very relevant and the above rate of closing stock @ Rs.622/MT has valid justification.

- iii. On the issue of incriminating material, she specifically submitted that the material was found for AY 2018-19 which is the statement of stock and based on that the AO obtained stock statement of earlier years from the mining authorities and therefore incriminating material was the stock statement for AY 2018-19 which led to unaccounted stock for the impugned assessment year i.e. AY 2013-14. Therefore, the addition is made based on incriminating material found during the course of search.
- iv. On the issue of opening stock and closing stock and why credit for opening stock is not given, she referred to para 6.7 of the appellate order where the Id. CIT(A) has given a categorical finding that the assessee does not maintain stock register and further the quantitative details are also not mentioned in the tax audit report. She referred to para 6.7 of the appellate order and stated that the CIT(A) is perfectly justified in not granting credit to opening stock but confirming the addition of closing stock.

28. In the rejoinder, the Id. AR reiterated the submissions and stated that:-

- i. There is no incriminating material found during search for AY 2013-14 but only for AY 2018-19 and material was gathered by the Id. AO during the course of assessment proceedings by making an enquiry of material found for AY 2018-19 and made the addition in AY 2013-14 on the basis of opening and closing stock related to the business of assessee from AY 2009-10.
- ii. He further stated that the assessment order for AY 2009-10 shows the quantity and there is no factual inaccuracy on the quantity of stock as well as the rate. Therefore, during the year, the addition is unwarranted.
- iii. He referred to the yearly reports of the quantitative details of the material to show that there is an excess opening stock than the quantity of closing stock. Therefore, no addition could have been made.
- iv. On the issue of not granting credit to opening stock while making addition of the closing stock, he submits that when the AO has himself stated that there is opening stock of 16.92 lakhs MT and closing stock of only 11.03 lakhs MT, the quantitative details are extracted by the Id. AO himself, therefore even if quantitative details are not maintained by the assessee or not reported in Form 3CD, the addition of closing stock without granting set off of the opening stock could not have been made.

- v. Accordingly, he submitted that addition is required to be deleted and is not based on any incriminating material found during search and further the addition on merit is also wrongly confirmed.
29. We have carefully considered the rival contention and perused the orders of the learned lower authorities. We have also carefully considered the paper books filed before us and relevant judicial precedence relied upon by both the parties.
  30. Ground no 1 to 6 and 16 and 17 are general or are not argued before us and therefore, same are dismissed.
  31. Ground no 7 in this appeal is whether Addition can be made in the hands of an assessee in a concluded assessment in absence of any incriminating material found during search for that year.
  32. It is apparent that in this case the original return of income was filed on 30/9/2023. The assessment under section 143 [3] of The Act was passed on 31/3/2016. Search took place on 19/11/2018. Therefore, it is apparent that Assessment year 2013 - 14, as on the date of search, it was a concluded assessment.
  33. It is now a settled issue that a concluded assessment can be disturbed pursuant to search, only if incriminating material is found during search pertaining to that assessment year.
  34. What Material was found during search Which is mentioned at page #277-280 Seized from the office of the Assessee. A statement dated 21/8/ 2017 and 5/1/2018 was drawn by the office of the Deputy Director of Department of Mines and

Geology. On the basis of the above seized document, a statement was recorded under Section 132 (4) of The Act of the managing director of the Assessee , who initially disclosed amount of stock as undisclosed income of the assessee for financial year 2017-18.

35. The assessing officer was confronted with a retraction statement on 01/4/2019 of the above disclosure made on 21/11/2018. The assessing Officer therefore issued a notice under section 133 (6) to the Deputy Director DMG in order to ascertain the undisclosed stock of iron ore lying at the mines of assessee since mining was banned to till date. This information was called for under section 133 (6) of the Act.
36. In such details obtained during the course of assessment proceedings it was found that assessee has a closing stock of 11,03,983 metric ton of Subgrade Iron ore as at 31/03/2013. As such subgrade iron stock was not disclosed in the balance sheet, In the tax audit report, in the return of income, the learned assessing officer made the addition of the same Valuing it at the cost of production which is Rs. 622/- per metric ton, which is lower of cost or sale price of Rs 1280/- per metric ton. Accordingly, the addition of Rs 68,26,77,426/- was made to the total income of assessee as undisclosed stock for the assessment year.
37. The issue is whether the addition is made based on incriminating material found during the course of search or not.
38. The clear cut answer on looking at page number 5 of the assessment order, it shows that the assessing officer has

obtained this information during the course of assessment proceedings by issuing notice under section 133 (6) of the Act. Thus, information is obtained by the assessing officer after the search. Thus, it is clear that such information of stock for the impugned assessment year 2013-2014 was not found during search , but it was gathered during the course of assessment proceedings.

39. It is also the fact that for assessment year 2013 -14, the learned Assessing Officer in passing the assessment order under Section 153 A of the ACT has not made any other addition Other than the addition of undisclosed closing stock of 11,03,983 Mt of Subgrade Iron Ore as at 31/3/2013.
40. On a plain reading of Section 153A of the Act, 1961, it is evident that once search or requisition is made, a mandate is cast upon the AO to issue notice under section 153A of the Act to the person, requiring him to furnish the return of income in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and assess or reassess the same.
41. Naturally, this was the understanding of the learned CIT A that in case of search under section 132 or requisition under section 132A, the AO assumes the jurisdiction for assessment under section 153A; But the issue raised before him was with respect to not making an assessment, but whether such concluded assessment can be disturbed in absence of any incriminating material found during the course of search.

42. Clearly, the mandate of the decision of the Honourable Supreme Court in case of *Abhisar Buildwell Private Limited* [supra] wherein it has been held that in case no incriminating material is unearthed during the search; the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during search under section 132 or requisition under section 132A of the Act, 1961 for that assessment year.
43. Undeniably, completed/unabated assessments can be re-opened by the AO in exercise of powers under sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved. However, we are not confronted with an assessment order passed u/s 147 of the Act but u/s 153 A of the Act.
44. Thus, it is clear that there is no incriminating material found during the course of search for the impugned assessment year i.e. Ay 2013-14 and therefore, the addition made by the learned Assessing Officer is contrary to the provisions of Section 153A as well as the decision of the Honourable Supreme Court. Thus, we do not have any hesitation in holding that the addition made by the learned Assessing Officer is contrary to the provisions of the law and judicial precedents cited before us.

45. Arguments of the Id CIT DR does not appeal to us that though incriminating material [stock statement based on which disclosure u/s 132 (4) is made] is pertaining to AY 2017-18 but the stock statement obtained by the Id AO u/s 133 (6) of the act for other assessment years originates from that material and therefore such information should also be considered as incriminating material found during course of search. If such arguments are accepted then all material which are collected during assessment proceedings will become incriminating material. Such is not the mandate of the provision of the law and decision of Honourable Supreme Court in *Abhisar Build well Ltd* [Supra].
46. Thus ground no. 7 of the appeal is allowed.
47. In view of our decision on Ground no 7, the ground no 8 of the appeal does not survive and hence, dismissed.
48. For completeness of the appeal, Ground no 9 to 15 is a challenge to the quantum of addition are also adjudicated. It is clear that assessee has an opening stock as on 31/03/ 2012 of 16,93,672 Metric ton of subgrade iron ore material, Assessee sold during the financial year 2012-2013, 5,68,000 metric ton, resulting into a closing stock of 11,03,983 metric tons. The same statement shows that there was an opening stock of 16,92,672 metric ton and closing stock of 11,03,983 metric ton. This information was received from a government agency which maintains the stock of the mines. It is also a fact that after the decision of the Honourable Supreme Court, there is no production at mines. Thus, the addition of closing stock of

11,03,983 metric tons of the raw material without considering that there is an opening stock already higher than that closing stock of 16,92,673 metric ton, the addition in the hands of the assessee, even in case of an undisclosed stock of the raw material would be Negative. This is so because from the same material documents gathered by the Assessing Officer, opening stock and closing stock details are available. The closing stock is less than the opening stock and sales made by assessee of 568,000 metric ton has already been disclosed in the profit and loss account as sales, which has been Offered for income tax. Therefore, even otherwise, there could not have been any addition in the hands of the assessee.

49. The reason why assessee was not granted credit for opening stock while making an addition for closing stock is that the assessee did not maintain stock register, and audit report, annual accounts, etc. does not disclose the stock. But the fact is that when the information is received from government agency showing the opening and closing stock, and if the opening stock is higher than the closing stock, irrespective of maintenance of books of accounts, not mentioning the same in tax audit report or in the annual accounts, such stock is not found to have been acquired during the year. As the assessee did not acquire any stock during the impugned Assessment year but is carried forward from earlier years, which cannot be disputed by the revenue, thus, there is no income during the year. It is apparent that neither the provisions of section 69 With respect to the unexplained investment or Section 69B relating to the amount of investments not fully disclosed in the books of accounts apply for

the reason that Assessee has not made any investments during the year and further has provided an explanation about source of such investment being opening stock of the same year. In the result Ground no 9 to 14 are allowed and Id AO is directed to delete the addition of undisclosed closing stock.

50. Ground no 15 is against charging of interest u/s 234 B , C etc. which is consequential in nature and hence dismissed.

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

Pronounced in the open court on this 25<sup>th</sup> day of April, 2025.

Sd/-

(KESHAV DUBEY)  
JUDICIAL MEMBER

Sd/-

(PRASHANT MAHARISHI)  
VICE PRESIDENT

Bengaluru,  
Dated, the 25<sup>th</sup> April, 2025.

*/Murthy /Dragon*

Copy to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. DR, ITAT, Bengaluru

By order

Assistant Registrar,  
ITAT, Bangalore.