



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRICHANDRA MOHAN GARG, JUDICIAL MEMBER
AND LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.128/CTK/2019

Assessment Year :2014-15

M/s. Shark Mines & Minerals pvt Ltd.,Plot No.A/62, BDA Housing Complex, Palaspalli, Bhubaneswar.	Vs.	Pr. CIT, Cuttack
PAN/GIR No.AAKCS 2385 R		
(Appellant)	..	(Respondent)

Assessee by : Shri S.K.Sarangji, AR
Revenue by : ShriM.K.Gautam, CIT DR

Date of Hearing : 12 /3/ 2021
Date of Pronouncement : 10/5/2021

ORDER

Per Bench

This is an appeal filed by the assessee against the order of the Pr. CIT, Cuttack dated 29.3.2019 u/s.263 of the Act for the assessment year 2014-15.

2. The assessee has raised following grounds in its appeal:

"1. For that order dated 29.3.2019 as passed by the Pr. CIT, Cuttack u/s.263 of the I.T.Act is far from just and legal on the facts and in the circumstances of the case.

2. For that Ld Pr. CIT is not justified in invoking jurisdiction u/s.263 of the Act and modifying the assessment order passed u/s.143(3) of the I.T.Act, on 23.11.2016 under 'Limited Scrutiny' category in

conformity with CBDT instructions on the facts and in the circumstances of the case.

3. For that Id Pr. CIT is not justified in invoking jurisdiction u/s.263 in respect of valuation of closing stock when the same was not the subject matter of "Limited scrutiny" in the assessment completed u/s.143(3) on the facts and in the circumstances of the case.

4. For that Id Pr. CIT is not justified to enhance the valuation of closing stock by Rs.15,53,849/- when there is no deviation in the method of valuation of stock consistently followed by the assessee on the facts and in the circumstances of the case."

3. At the time of hearing, Id A.R. of the assessee did not press Ground Nos.2 & 3, therefore, both the grounds are dismissed as not pressed.

4. Ground No.1 of appeal is general in nature and hence, requires no adjudication.

5. Ld A.R. of the assessee pressed Ground No.4 which relates to enhancement of valuation of closing stock by Rs.15,53,849/-.

6. Facts of the case are that the assessee company derives income from trading of iron ores. The original assessment was completed u/s.143(3) of the Act on 23.11.2016 determining the total income at Rs.2,13,61,760/-. Thereafter, the Pr. Commissioner of Income Tax-1, Bhubaneswar issued a show cause notice dated 4.12.2018 u/s.263 of the Act , requiring the assessee to show cause as to why the assessment order framed u/s. 143(3) of the IT. Act, 1961 on 23.11.2016 for the A.Y.2014-15 shall not be cancelled/suitably modified by passing an order u/s 263 of Income Tax Act on the following reasons:

“1. On verification of the assessment record, it was noticed from Note-20 of the profit & loss account that an amount of Rs.82,44,039/- was shown as inventory of Iron ore at the end of the year and the same was also shown as inventory under the head of 'Current assets' in the balance sheet as on 31st March 2014. Further it was noticed that the tax auditor at point no 14(a) of Form 3CD stated that method of valuation of closing stock employed in the previous year is "FIFO at actual cost". From the quantitative details of items of goods shown at point no. 35a of the tax audit report, it is seen that closing stock of Iron ore was 7796 MT and shortage/excess was 3205 MT. However, the tax auditor in the Annexure to the audit report certified that "inventory had not been physically verified by the management during the year and the company had not maintained any record for wastages/losses".

2. In view of the aforesaid remarks of the tax auditor, the wastage/loss of stock of Iron ore claimed by assessee was incorrect. Moreover, the AO should have called for assessee's statutory Annual Mining return in Form-H1, which the assessee was supposed to file under Rule 45 of Mineral Conservation and Development Rules 1988, before the Regional Controller of Mines in the Indian Bureau of Mines and ought to have verified assessee's claim of wastage/loss of stock of Iron ore as per Balance Sheet vis-a-vis information provided in the said statutory Annual Mining return, which he has not done.

3. Further, on scrutiny of the cost of materials purchase as per Note-21 and quantity of materials purchases as per Annexure-1 of the tax audit report, it was noticed that assessee had incurred expenditure of Rs.57.82.13.678/- for purchase of 160535 MT of Iron Ore @ Rs 3 601/- per ton in its P & L account in the relevant previous year. Since the assessee was adopting "FIFO at actual cost" method for valuation of its closing stock, the value of closing stock of 7796 Ton of Iron Ore should have been at Rs.2,80,73,396/- (7796 x Rs 3601) instead of Rs.82,44,039/- as declared by the assessee. As such, closing stock was undervalued by Rs. 1,98,29,357/- (Rs.2,80,73,396 - Rs.82,44,039) and the AO ought to have added back the same to the total income of the assessee, which he has not done.

4. It may be mentioned here that the valuation of closing stock is a vital factor in determining the taxable income of an assessee from business, as correct profit cannot be ascertained unless the opening and closing stock are valued correctly. Though, the valuation of stock does not generate funds, it does affect taxable income of the

assessee. Once a particular method of valuation is adopted, the same should be continued in subsequent years.”

7. In reply to show cause notice, the gist of the submissions of the assessee before the Id. Pr. CIT is as under:

- i) In the tax audit report at 35(a) of Form 3CD, quantitative details of iron ore fines was given and shortage has been disclosed at 3205 MT.
- ii) The closing stock of 7796MT is mentioned before deduction of shortage.
- iii) The assessee had maintained proper record and inventory of iron ore fines.
- iv) The assessee is not required to file return in Form H1 before the mining authorities.
- v) The shortage is 1.8% of the total quantity.
- vi) The observation that the closing stock has been undervalued by Rs.1,98,29,357/- is not correct.
- vii) The transportation cost included while calculating the cost per MT is not correct .
- viii) The assessee has been following average actual cost of FIFO basis or net-realizable value which is lower for the purpose of valuation of inventory consistently followed without any deviation.
- ix) The assessee has valued actual closing stock of 4591 MT @ Rs.1795/- per MT to Rs.82,44,039/- on FIFO basis.

8. None of these submissions, however, impressed the Ld Pr. Commissioner of Income Tax. Ld. Pr. CIT observed that while passing

the assessment order u/s.143(3) of the Act, the Assessing Officer has not considered the following two issues.

- i) allowance of claim of shortage of iron ore of 3205 MTs.
- ii) valuation of closing stock of iron ores adopting FIFO method of accounting.

7. Now the assessed has preferred this appeal against the said order of Pr. CIT passed u/s.263 of the Act directing the AO to modify his assessment order dated 23.11.2016 passed u/s.143(3) of the Act by making further addition of Rs.15,53,849/- under the head "undervaluation to closing stock".

8. We may also point out that regarding issue of allowance of claim of shortage/loss of stock of iron ore of 3205 MTs, Pr. CIT in para 11 of the said order observed no irregularity with regarding to the claim of wastage/loss of iron ore as claimed by the assessee in its return of income. Therefore, no adverse inference was drawn and consequently, this issue was dropped.

9. We have heard the rival arguments of both the sides and carefully perused the relevant materials placed on the record of the Tribunal.

10. Ld A.R. of the assessee, reiterated the submissions made before the Ld Pr. CIT and further submitted that in the tax audit report at 35(a) of Form 3CD, quantitative details of iron ore fines was given and shortage has been disclosed at 3205 MT and closing stock was mentioned after deduction of shortage. The assessee had maintained proper record and

inventory of iron ore fines. He further submitted that the shortage is 1.8% of the total quantity. He submitted that the assessee is following FIFO method consistently, which is accepted and recognised method of valuation of closing stock. Ld A.R. referred to following decisions of the Tribunal to contend that the FIFO method by the assessee has been accepted by the Tribunal:

- i) ITAT Kolkata in the case of Rupam Jewellers vs ACIT in ITA No.267/Kol/2017 for A.Y. 13-14.
- ii) ITAT Cuttack in the case of Sree Alankar vs Pr. CIT in ITA No.108/CTK/2018 for A.y. 12-13 order dtd.12.9.18.

11. Replying to above, Id CIT DR vehemently supporting the impugned order submitted that Pr. CIT rightly observed that the assessee had claimed to have adopted FIFO method for valuation of closing stock of 4591.325 MT, which was valued @ Rs.1795/- per MT amounting to Rs.82,44,039/-. Ld CIT DR further explained that during the course of proceedings before the Ld. Pr. CIT, the assessee furnished its method of valuation of closing stock giving the details in a tabular form, based on cost prices reflected in purchase invoices, issued by some parties from whom, the assessee has purchased iron ores. Ld. Pr. CIT further submitted that the computation of cost per MT of stock as submitted by the assessee has been found to be incorrect. Therefore, Pr. CIT was right in proceedings to re-compute the cost per MY of iron ore after inclusion of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee and after

taking the quantity of purchases commensurate to the quantity of closing stock declared by the assessee i.e. 4591.000 MT. He submitted that Pr. CIT was also right in taking cost of each MT of FIFO basis at Rs.2134/- per MT as against Rs.1795 per MT computed by the assessee. Ld CIT DR submitted that while recomputing the cost of MT on FIFO basis, Pr. CIT included a bill of OMC Limited dated 21.12.2013 of 751.810 MTs to the bill details submitted by the assessee and there is no mistake in the computation. Therefore, it was rightly held that the assessment order is erroneous and prejudicial to the interest of the revenue. Ld CIT DR has placed reliance on the decisions of Hon'ble Supreme Court in the case of CIT vs. British Paints India Ltd., 188 ITR 44 (SC) and Malabar Industrial Co Ltd vs CIT, 243 ITR 83 (SC) and the decision of Hon'ble Allahabad High Court in the case of CIT vs Bhawagan Das, 272 ITR 367 (All).

12. Placing rejoinder to above, ld A.R. of the assessee submitted that the AO has adopted one view out of two possible views, therefore, the assessment order cannot be alleged as erroneous and prejudicial to the interest of the revenue on the basis of cost of closing stock for reomputation adopted by the Pr. CIT. Therefore, the impugned order as well as consequent proceedings may kindly be quashed.

13. Besides the above submissions, ld CIT DR drew our attention towards the impugned assessment order dated 23.11.2016 and submitted that there is no enquiry by the AO on this issue. Therefore, it is a clear

case of no enquiry of a glaring issue which goes to the root of the matter. Therefore, the Pr. CIT was also correct on this count holding the assessment order erroneous and prejudicial to the interest of the revenue.

14. On careful consideration of the rival submissions, first of all, we may point out that the AO has passed the impugned assessment order u/s.143(3) and there is no deliberation or discussion therein regarding valuation of closing stock by the assessee. We may also point out that from the Note 20 of the profit and loss account, it was clear that the assessee has shown closing stock of Rs.82,44,039/- as inventory of iron ore at the end of the year and same was shown as inventory under the head of "current assets" in the balance sheet as on 31.3.2014. It was also clear that tax auditor at point no.14(a) of Form 3CD stated that the method of valuation of closing stock employed in the previous year is "FIFO at actual cost". From the quantitative details of items of goods shown at point no.35a of the tax audit report, it was clear that the closing stock of iron ore was 7796 MT and shortage/excess was 3205 MT. However, the tax auditor in the Annexure to the audit report certified that inventory had not been physically verified by the management during the year and the company had not maintained any record for wastages/losses".

15. From these facts, Pr. CIT, prima facie, observed that the closing stock has been undervalued by the assessee, the AO ought to have added

back the amount of under valuation to the total income of the assessee, which has not been done. In this regard, we are of the considered view that when some glaring facts revealed from the tax audit report, the valuation of closing stock is not proper and as per the principles adopted for valuation of closing stock, then obviously, the AO was required to make adequate enquiry in this regard to cover all possible of leakage of revenue. In the present case, the AO has miserably failed to apply with the requirement of legislature as an investigator and adjudicator. Therefore, Ld. Pr. CIT is right in holding the assessment as erroneous and prejudicial to the interest of the revenue. There is no whisper in the assessment order regarding the issue of under valuation. Therefore, we are compelled to hold that the AO has not made any enquiry on the issue which he ought to have examined and verified at his level before passing the assessment order.

16. In the case of British Paints India Ltd (supra), the Hon'ble Supreme Court has held that it is incorrect to say that the AO was bound to accept the system of accounting regularly employed by the assessee, the correctness of which had not been questioned in the past. Their Lordships held that there is no estoppel in these matters and the officer is not bound by the method followed in the earlier years. As per this proposition, we are unable to accept the contention of Id counsel for the assessee that since the assessee was regularly and consistently following FIFO method, therefore,

the AO could have accepted the same without any further examination and verification.

17. As regards to the decision of ITAT Kolkata relied by Id counsel for the assessee in the case of Rupam Jewellers (supra), the revenue authorities had disturbed the method of valuation adopted by the assessee by adopting weighted average method of costing and arrived at the profits of the year without doing the same method of valuation to the opening stock of the assessee. On appeal, the Tribunal observed that the revenue authorities have committed the mistake. However, in the present case at hand, the Pr. CIT has not disturbed the method employed by the assessee i.e. FIFO method of valuation but recomputed the cost of valuation, which bill was not considered by the AO while passing the assessment order. Similar is in the case of Sree Alankar (supra) passed by ITAT, Cuttack. Hence, the decisions relied on by Id counsel for the assessee have no application in the present case.

18. From the careful reading of the revisional order u/s.263 of the Act, it is clear that Pr. CIT has not disturbed or disputed the method of valuation adopted by the assessee i.e. FIFO method but the computation made by the assessee was examined and found to be incorrect because only by including 4th bill to the details of three bills submitted by the assessed, it was observed that after inclusion of 4th bill, of the same period/date, the valuation of closing stock is enhanced to Rs. 2134 per MT instead of 1795

per MT as adopted by the assessee. On being asked by the bench, ld counsel for the assessee could not point out any defect or discrepancy in the recomputation made by Pr. CIT for computation of closing stock by adopting FIFO method. As we have already observed that there is no enquiry by the AO on this issue in the assessment order, therefore, in our considered view, the Ld. Pr. CIT was correct in holding the assessment as erroneous and prejudicial to the interest of the Revenue and by directing the AO to modify the assessment order enhancing the addition of Rs.15,53,849/-.

19. In the result, appeal of the assessee is dismissed.

Order pronounced u/4 34(4) of I.T.Rules, on 10 /5/2021.

Sd/-

(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

Cuttack; Dated 10/5/2021
B.K.Parida, SPS

sd/-

(Chandra Mohan Garg)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant :M/s. Shark Mines & Minerals pvt Ltd.,Plot No.A/62, BDA Housing Complex, Palaspalli, Bhubaneswar.
 2. The Respondent. Pr. CIT, Cuttack
 3. The CIT(A)-, Cuttack
 5. DR, ITAT, Cuttack
 6. Guard file.
- //True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack