**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**TAX CASE (INCOME TAX APPEAL) NO. 48 OF 2015**

Deputy Commissioner of Income Tax-1(I), Raipur, District Raipur (C.G.)

**… Appellant**

**Versus**

M/s Ramesh Steel Industries, Agrawal Complex, Samta Colony, Raipur (C.G.)

**... Respondent**

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For Appellant : Ms. Naushina Afrin Ali, Advocate.

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**Hon'ble Shri Navin Sinha, Chief Justice**
**Hon'ble Shri Justice P. Sam Koshy**

**Judgment on Board**

**Per NAVIN SINHA, C.J.**

**11/01/2016**

**1.** The present appeal assails order dated 19.6.2015 dismissing ITA No. 145/BLPR/2011 preferred against the order of the CIT (Appeals) dated 31.3.2011 passed in favour of the Respondent with regard to the assessment year 2006-07.

**2.** Originally, the assessment order was passed under Section 143(3) of the Income Tax Act by the Assessing Officer, dated 19.11.2008, imposing taxable liability of Rs. 79,66,176/- holding that the production figures shown were lower than the last two years even though power consumption showed upward trend. The Assessee was not in a position to explain the reason for lower production. Applying the net rate of profit on basis of the production of previous years, taxable liability as aforesaid was fixed. The matter was carried to the CIT (Appeals) by the Assessee, who allowed the same on 29.10.2009. The department carried the matter to the Tribunal which remanded it to the CIT (Appeals) because the order was not reasoned, leading to fresh orders on 31.3.2011.

**3.** Learned Counsel for the Appellant submitted that if power consumption was high in the assessment year it stands to reason how production could have not only gone lower but taken a nose dive. The view taken by the Assessing Officer that in absence of any reasonable explanation by the Assessee with regard to reasons for lower production, no error was committed in making assessment under Section 145(3) of the Income Tax Act based on the production figures of earlier years.

**4.** We have considered the submissions and do not find that the present appeal raises any substantial question of law for determination by this Court. The mere fact that out of the two units, production may have been low in one of the units offsetting the gross profits that may have been obtained from the other unit, cannot ipso-facto lead to an inescapable conclusion of concealment of income merely because power consumption may have gone up. Power consumption in an industry may vary for various reasons. It is not the case of the department as rightly held by the CIT (Appeals) that there has been any clandestine sale or purchase by the Assessee. The Tribunal has rightly opined that the graph of business was not always in a straight line and fluctuates from year to year. Under Section 145(3) of the Income Tax Act, the jurisdiction of the Assessing Officer arises if he was not satisfied about the correctness of the accounts of the Assessee. The Tribunal has rightly observed that the Assessing Officer has not given any specific reason for rejecting the books of accounts. The power in the Assessing Officer was not absolute but was regulated and circumscribed by statutory provisions. The CIT (Appeals) relied upon the judgement of the Guwahati High Court. The grounds of appeal do not make any reference to the same and the reason for its inapplicability but none the less the present appeal was preferred.

**5.** Since the present appeal raises no substantial question of law for determination under Section 260 of the Income Tax Act, the appeal is dismissed.

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| Sd/- | Sd/- |
| **(Navin Sinha)** | **(P. Sam Koshy)** |
| **Chief Justice** | **Judge** |

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