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ITAT/303/2018
IA No.GA/2/2018 (Old No.GA/3264/2018)

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL-I, KOLKATA.

-Versus-

M/S. RUNGTA MINES LTD.

Appearance:
Mr. Tilak Mitra, Adv.
...for the appellant.

Mr. Subash Agarwal, Adv.
...for the respondent.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 2nd August, 2022.

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, is directed against the order dated 9th March, 2018 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (the Tribunal) in IT(SS)A Nos.30 to 33/Kol/2015 for the assessment years 2007-08 to 2010-11.

The revenue has raised the following substantial questions of law for consideration:

i) Whether on the facts and in the circumstances of the case the learned Tribunal was justified in law to confirm the decision of the CIT(A) in respect of deleting the addition *made by the Assessing Officer on account of suppressed sales ignoring the fact that the same was added on the basis of computation of suppressed production and corresponding value as per the finding of the Sales Tax Authorities.*

ii) Whether on the facts and in the circumstances of the case the Learned Tribunal was justified in law in dismissing the appeal of the revenue on the ground that Assessing Officer made additions without bringing any indirect circumstantial evidences on record ignoring the fact that the Assessing Officer arrived at a finding based on the estimation on the opinion of Dean of NIT.

iii) Whether in the fact and circumstances of the case and in law, the Hon'ble Tribunal has erred in deleting the addition on the basis that rejection of books of account u/s 145(3) was not discussed in the assessment order whereas it is clear by the assessment order that while making addition on account of suppression in production and sales thereof, the books of accounts submitted by assessee were not accepted by assessing officer which implies that books of accounts were rejected."

We have heard Mr. Tilak Mitra, learned standing counsel for the appellant/revenue and Mr. Subash Agarwal, learned Advocate for the respondent/assessee.

After elaborately hearing the learned Advocates appearing for the parties and carefully perusing the materials placed on record, we are of the clear view that the entire matter is factual. The question before the assessing officer was with regard to the iron content in the ore which is mentioned as Fe content in the ore. Based on an estimation the assessing officer came to the conclusion that there was suppression of sales. On appeal, the Commissioner of Income (Appeals)-20, Kolkata made elaborate exercise and by order dated 12th December, 2014 allowed the assessee's appeal. The revenue challenged the same before the tribunal. The tribunal on its part, re-examined the factual position. At this stage, the following paragraph of the order passed by the tribunal would be relevant:

> "***21.*** *From a perusal of the aforesaid opinion given by the Dean of NIT, we note that it is a* ***general opinion*** *and not an opinion rendered after analysing the sample iron ore used in Karakolha sponge iron plant. From a perusal of the opinion it is understood that the Dean of NIT acknowledges the fact that no direct data is available in any reference book dealing with DRI (Direct reduce of iron) on raw material consumption pattern. Secondly he acknowledges the fact that the yield ratio vary from plant to plant depending on composition of quality of raw material and the operating conditions. The dean of NIT has admitted that his technical opinion is based on his knowledge and general discussion with some producers. With the aforesaid background the Dean of NIT has opined that the average requirement of raw material i.e. iron ore – 1.5 tons when Fe content in the ore is 65% to produce a ton of sponge iron, under average Indian conditions. . . .*
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> *. . . It has been categorically stated by the Dean of NIT that the consumption of iron ore per ton of sponge iron will be more than 1.5 MT if the FE content in the iron ore was less than 65%, This particular*

technical information of the Dean, NIT clearly comes in aid of the assessee company which has been able to place on record the Laboratory Report of the iron ore which was used in its Karakolha sponge factory. The lab results show the Fe content of iron ore used in its Karakolha plant were between 62.795 and 63.23% from 2006 to 2009 (up to July). Therefore, we note that the Ld. CIT (A) has clearly analysed the letter of Dean, NIT and has come to a finding that reliance by the AO blindly of the Dean, NIT's report is erroneous, which we concur.

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29. *To sum up finally, we note that there can be no universal and uniformly acceptable standard for consumption of iron ore for production of sponge iron. It has to be appreciated that the various other factors like quality, composition of raw materials, operating conditions etc which contribute to the yield ratio. From the discussions stated above, we note that the yield ratio can vary from plant to plant and even differ from year to year based on the capacity of the plant, the efficiency of the staff, maintenance of the plant, electricity consumption etc. The Fe content of the iron ore also varies from geographical location of mine to mine, season to season etc. So, there cannot be any universal and uniformly acceptable standard for consumption of iron ore. The Fe content in an iron ore is a scientific fact and which can be determined by scientific test conducted at Laboratory equipped for finding that. However, in the instant case, the AO failed to collect samples of the iron ore during search conducted on 06.02.2012 (even the sales tax official*

> *who raided on 18.08.2009 failed to do so) and sent it for examination at a laboratory to find out the Fe content of the iron ore utilized at its Larakolha plant at Orissa, thus making the estimation of excess production based on imaginary figures without any scientific base. The AO in this case has blindly based his estimation on the opinion of the Dean of NIT."*

The above finding rendered by the tribunal was after re-appreciating the factual position. The undisputed case is that the report given by Dean, NIT was not based on any sample which have been brought, but based on the generalised information. This has been admitted and taken note by the CIT(A) as well as the tribunal.

Thus, we are of the view that no question of law much less substantial question of law arises for consideration in this appeal.

Accordingly, the appeal filed by the revenue (ITAT/303/2018) fails and is dismissed.

Consequently, the connected application for stay (IA No.GA/2/2018) also stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Das/As.