

(2013) 02 BOM CK 0216

Bombay High Court (Goa Bench)

Case No: Tax Appeal No. 59 of 2012

M/s. D.B. Bandodkar and Sons
Pvt. Ltd.

APPELLANT

Vs

The Asst. Commissioner, of
Income Tax and The Additional
Commissioner of Income Tax

RESPONDENT

Date of Decision: Feb. 25, 2013

Acts Referred:

- Income Tax Act, 1961 - Section 142(1)

Hon'ble Judges: V.M. Kanade, J; F.M. Reis, J

Bench: Division Bench

Advocate: G. Sarangam, with Mr. P. Dinesh and Mr. S.M. Singbal, for the Appellant; A. Dessai, for the Respondent

Judgement

V.M. Kanade, J.

Appellant has filed this appeal challenging the common orders passed by Income Appellate Tribunal, Panaji Bench in Income Tax Appeal No. 191 & 192/PNJ/2011 dated 20.4.2012. By the said impugned orders the Income Tax Appellate Tribunal was pleased to confirm the orders which were passed by CIT Appeals who had intern confirmed the order of assessing officer. Both these appeals were disposed of by common judgment in respect of the Assessment Year 2005-06 and 2006-07. The brief facts of the case are that the assessee filed returns declaring his total income of Rs. 14,31,97,320/- (Rupees fourteen crores thirty one lakhs ninety seven thousand three hundred twenty only). Notices were issued u/s 142(1) dated 21.7.2009 and 31.8.2009 along with questionnaire seeking details in connection with the return which was filed. According to the Revenue, survey was conducted u/s 133(a) by DDIT(Inv), Panaji on 27.9.2006 and certain discrepancies relating to Assessment Year 2005-06 were noticed. In the Assessment order discrepancies have been mentioned which are as under:-

On account of unaccounted stock of 18869 Metric Tones (hereinafter referred to as "M.T." for short) of ore valued at Rs. 2.30 crores were found lying at the railway plot of the appellant. Secondly, assessee had purchased 45,848 M.T. of iron ore from outside parties especially from Hospet region during the financial year 2004-2005. The Assessee used to purchase high grade iron ore of 63.5% FE content from the Hospet region and used to blend it with low grade iron ore for the purpose of export and out of the total purchase of 45,848 M.T. from outside parties. The assessee purchased 18869 M.T. in the 2nd half of March, 2005 from certain suppliers names of whose are mentioned in the assessing order. After profit and loss account for the year 2004-05 was verified it transpired that the assessee had not included 18869 M.T. of iron ore in the closing stock. Explanation was asked from the General Manager. He informed that some quantity of ore was taken from M/s. Orient (Goa) Pvt. Ltd. (hereinafter referred to as "M/s. OGPL" for short) as loan cargo and thereafter returned to M/s. OGPL. According to him these ore have been included in the books of M/s. OGPL as closing stock. According to the Assessing officer from the verification of the books there was no proof of movement of material from M/s. OGPL to M/s. D.B. Bandodkar and Sons Pvt. Ltd. (hereinafter referred to as "M/s. D.B. Bandodkar" for short) No bills for loan of cargo was issued by M/s. D.B. Bandodkar during the year and assessee was unable to produce any proof or evidence in support of his claim and in the absence of evidence or documentary proof it was held that excess closing stock 18869 M. T was not shown in the records. An application for rectification was made for the assessment year 2006-07, on the ground that the stock as on 31.3.2005, could not be added in the assessment year 2006-07. According to assessing officer, this mistake was rectified on 16.1.2009. It was therefore, contended by the Revenue that assessee had not stated the value of its closing stock as on 31.3.2005 and therefore, the case was reopened by issue of notice u/s 148 dated 17.7.2008. Thereafter again the representative of the appellant appeared and the authorised representative was asked to file explanation with documents in respect of non inclusion of 18869 M.T. of closing stock. The authorised representative gave shipment wise details of sale of ore and statement showing month wise purchase and sale of Hospet ore by submission dated 18.12.2009. This contention was not accepted by giving detail reason.

Again it was urged that assessee had borrowed Hospet ore from M/s. OGPL in order to meet its export requirements for shipment in the month of March, 2005 and said quantities were returned to M/s. OGPL on purchase of order at Hospet in the last weeks of March, 2005 and since the transaction was settled in the same year it was not necessary to raise debit note or other document. In support of his claim statement obtained from M/s. OGPL of their hospet ore which showed that M/s. OGPL had sufficient stock when transfer to the assessee company took place. The assessing officer held that M/s. OGPL is sister concern of assessing company and in the absence of any other supporting evidence on the basis of book entries could not be relied upon. The assessing officer observed that these entries at the best would

be in the nature of supporting evidence that could be of some help to the assessing company along with other relevant proof regarding actual movement of stock and since no proof of movement of material was made available at the time of survey or subsequently and no bills for loan of cargo were raised by the appellant during the year. The assessee was unable to submit any proof or evidence in support of their claim. The Assessing officer did not accept the contention of the appellant that there was no necessity for raising any debit note or any other documents in respect of the transaction of crores of rupees, and therefore, in the absence of any evidence, the claim of the assessee was rejected. This order was confirmed by Commissioner of Income Tax (Appeals).

Before the Commissioner Appeals also it was urged that Commissioner of Income Tax has failed to appreciate the facts of the case during the relevant year and passed an order without stating why the facts were ignored and why the reliance was placed only on the purchase bills. It was contended that inter office communication clearly shows the type of ore exported in respect of each shipment during the year and copies of these correspondence in the 2004-05 are enclosed as Annexure 3. The Commissioner of Income Tax again after going through the material did not accept the contention of the appellant and has observed that appellant has not furnished any income correspondence or transaction receipt in support of his claim that iron ore belong to M/s. OGPL has been borrowed by the appellant company. The Commissioner of Income Tax has observed in its order as under:-

It is quite unbelievable that when substantial quantity of 18869 MT of iron ore belongs to M/s. OGPL, there was no reason why the said material was lying at the railway plot belonging to the appellant company and not at the premises of M/s. OGPL. It may be mentioned that the appellant purchases high grade iron ore from Hospet/Bellary region and mix the same with low grade iron ore in Goa and make them into saleable grade and thereafter, export them. It has been widely reported in press that huge quantity of high grade ore has been illegally mined in Karnataka over the last several years and most of them have been sold without being accounted. It is quite apparent that the appellant has purchased the high grade 18869 MT of iron ore without recording in the books of account and after mixing it with low grade stock, has exported in various consignment abroad. He has further observed that during the course of argument he has submitted five inter-office correspondences. The Commissioner of Income Tax has observed that this reflect only grade wise order loaded in various vessels and details of tonnage and moisture content. However, in none of the documents, there is any mention of temporary loan of iron ore from M/s. OGPL to the appellant company and therefore on this ground appeal was rejected. Same was the case in respect of next assessment year. The Assessing Officer and the Commissioner (Appeals) passed an order against the appellant which order was confirmed by Commissioner of Income Tax. Two appeals were filed before Income Tax Appellate Tribunal bearing ITA No. 191 and

192/ONJ/2011 which were disposed of by common order.

2. Before Income Tax Appellate Tribunal an application was filed for bringing additional evidence on record. The said application was rejected and both the Income Tax Appeals were rejected and were dismissed and the order passed by lower authority was confirmed.

3. Learned Counsel appearing on behalf of the appellant firstly submitted that in rejecting the application for bringing additional evidence on record it was submitted that the relevant material was available with the assessing officer and he ought to have perused the said material on record. He submitted that assessing officer has observed that the entries in the books of account could be held to be supportive evidence in support of primary material and when other relevant documents and account will be produced. In view of this finding the application for bringing additional evidence on record ought to have been allowed. It was contended that Income Tax Appellate Tribunal and lower authority had given incorrect finding. Learned Senior Counsel has taken us to the observation made by Income Tax Appellate Tribunal and the assessing officer.

4. In our view no substantial question of law will arise in this appeal and all the three authorities have taken into consideration material which is on record and have carefully given their finding. Inspite of the several opportunities given to the appellant the documentary evidence was not produced on record to establish the same and only at the time of hearing of the appeal before Income Tax Appellate Tribunal an application for bringing additional evidence on record was filed even then the said application was considered and was rejected by reasoned order.

5. In our view, therefore, no case is made out for interfering with the orders passed by the authorities below. All the authorities have considered the evidence on record. The appellant on the other hand is not being in a position to establish or to give satisfactory reason in respect of unaccounted iron ore to the tune of 18869 M.T. The Income Tax Appellate Tribunal was justified in rejecting the application for bringing additional evidence on record and also dismissed the Income Tax Appeals No. 191 and 192 of 2011 for the year 2005-06 and 2006-07. Appeal accordingly is dismissed.