

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH "C"

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER AND
SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

ITA No. & Assessment Year	Appellant	Respondent
679/Bang/2010 2004-05	M/s. Mysore Minerals Ltd., No.39, M.G. Road, Bangalore-560 001 PAN AACCM 2873L	Assistant Commissioner of Income Tax, Circle 12(1), Bangalore.
350/Bang/2011 2005-06	M/s. Mysore Minerals Ltd., Bangalore-560 001	ACIT, Cir.12(1), Bangalore.
351/Bang/2011 2005-06	ACIT, Cir.12(1), Bangalore.	M/s. Mysore Minerals Ltd., Bangalore-560 001
680/Bang/2010 2006-07	M/s. Mysore Minerals Ltd., Bangalore-560 001	ACIT, Cir.12(1), Bangalore.
733/Bang/2010 2006-07	ACIT, Cir.12(1), Bangalore.	M/s. Mysore Minerals Ltd., Bangalore-560 001

Appellant By : Shri V. Chandrashekar.

Respondent By : Shri Etwa Munda.

Date of Hearing : 8.10.2012.

Date of Pronouncement : 2.11.2012.

O R D E R

Per Jason P Boaz :

These are appeals by the assessee for Assessment Year 2004-05 and cross appeals of both the assessee and revenue for Assessment Years 2005-06 and 2006-07. Since common issues are involved, these appeals are being disposed off by way of common order for the sake of convenience.

ITA No. 679/Bang/2010 (Assessment Year 2004-05)

2. The facts of the case, in brief, are as under :

2.1 The assessee company (hereinafter referred to as 'the assessee') is a Govt. of Karnataka undertaking engaged in the business of mining of iron ore, other minerals and

granite. The assessee had taken certain lands on lease from the State Govt for the purpose of mining of iron ore, etc. In the meanwhile, the Hon'ble Apex Court by orders dt.30.10.2002 and 1.8.2003 in IA No.566 in Writ Petition (Civil) No.202 of 1995 in the case of T.N. Godavarman Tirumalpad Vs. UOI held that in the matter of Compensatory Afforestation Fund, the user agencies are liable for payment of net present value for diversion of forest land for non-forest purposes under Forest (Conservation) Act, 1980. Pursuant to the said order the Ministry of Forest and Environment, Govt. of India, formed guidelines in accordance with which the assessee had to make payment of Rs.5,02,59,000 to the said fund so as to be eligible to continue its mining activities. The payment of Rs.5,02,59,000 was made by the assessee towards the net present value towards Compensatory Afforestation Planning & Managing Agency (CAMPA) during the period relevant to Assessment Year 2004-05. The assessee in its books of account wrote off the entire amount as revenue expenses and filed its return of income for Assessment Year 2004-05 on 1.11.2004 accordingly by declaring income of Rs.2,87,22,404. The return was processed under section 143(1) of the Act and the case was subsequently taken up for scrutiny. The assessee subsequently filed revised return of income on 13.1.2006 and 9.3.2006 declaring income of Rs.49,221 and loss of Rs.4,01,57,986 respectively. The Assessing Officer completed the assessment by an order under section 143(3) of the Income Tax Act, 1961 (herein after referred to as 'the Act') on 28.12.2006 assessing the income at NIL after setting off brought forward unabsorbed business losses of Rs.49,220 for Assessment Year 2000-01. In this order, the Assessing Officer held that the expenditure of Rs.5,02,59,000 towards net present value for CAMPA was capital

expenditure as it was a one time payment, non-recurring and gave an enduring benefit to the assessee. In this view of the matter, the Assessing Officer held that the assessee was eligible to amortise the payment so made over a period of five years and allowed 20% of Rs.5,02,59,000 by way of amortization for the impugned Assessment Year 2004-05.

2.2 Aggrieved by the order of assessment dt.28.12.2006, the assessee went in appeal before the CIT(Appeals). The learned CIT(Appeals) while hearing the appeal came to the conclusion that the said expenditure of Rs.5,02,59,000 was capital in nature. Further, the learned CIT(Appeals) was of the opinion that the entire amount required to be disallowed and no part of it was to be amortised either. The learned CIT(Appeals) issued a notice of enhancement of income assessed by withdrawal of the 20% of amortization allowed by the Assessing Officer and afforded the assessee an opportunity of being heard and to put forth its objections. After duly considering the objections put forth by the assessee, the learned CIT(Appeals) held that the expenditure was capital in nature and that there being no provision in the Act for amortization of the same, enhanced the assessed income for Assessment Year 2004-05 by disallowing the amortized amount of Rs.1,00,51,800.

3. Aggrieved by the order of the learned CIT(Appeals) dt.25.3.2010 for Assessment Year 2004-05, the assessee is now before us. In the grounds of appeal raised, it has been contended that -

"1. The order of the authorities below in so far as it is against the appellant, is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the appellant's case.

2. The authorities below are not justified in law in treating an expenditure of Rs.5,02,59,000 as capital expenditure and further failed to appreciate the fact that the expenditure incurred is in the nature of Revenue expenditure under the facts and circumstances of the case.

3. *The learned CIT (Appeals) is not justified in law by making an enhancement to the income assessed by the learned Assessing Officer. Further, without prejudice, the learned CIT (Appeals) is not justified in law in directing the learned Assessing Officer not to allow amortization of expenditure without looking into the facts and circumstances of the case.*

4. *The appellant craves leave to add, alter, delete or substitute any of the grounds urged above.*

5. *In the view of the above and other grounds that may be urged at the time of hearing of the appeal, the appellant prays that the appeal may be allowed in the interest of justice and equity."*

4. The grounds of appeal raised at S.Nos.1, 4 and 5 are general in nature and therefore no adjudication is called for thereon.

5.1 The only issue of dispute in this appeal at S.Nos.2 and 3 that needs to be decided in whether the payment of Rs.5,02,59,000 on account of net present value towards CAMPA is in the nature of revenue expenditure or capital expenditure and if it is a capital expenditure whether amortization as granted by the Assessing Officer is to be allowed or not.

5.2 The learned counsel for the assessee, at the outset, supported the submissions in the grounds of appeal and in support thereof placed reliance on the decision of a coordinate bench of the ITAT, Bangalore in the case of M/s. Ramgad Minerals & Mining Pvt Ltd. Vs. ACIT in ITA No.1012(BNG)/2008 dt.9.4.2009, a copy of which was placed on record. He submitted that in that case, the very same issue of payment made for net present value to CAMPA was considered and the Bench had held that payment to of net present value to CAMPA was a revenue expenditure and not a capital expenditure which gave the assessee a benefit of enduring nature and had directed the authorities below to allow the same in the year in which it was incurred. Therefore, the learned counsel for the assessee submitted that this issue be allowed in favour of the assessee.

5.3 Per contra, the learned Departmental Representative supported the orders of the authorities below on this issue that the payments of net present value to CAMPA were capital expenditure and also on the enhancement of assessed income pursuant to the withdrawal of amortization of 1/5th of the expenditure of net present value to CAMPA.

5.4 We have heard both parties and carefully perused the material on record and the judicial decisions cited and placed reliance upon. We have perused the decision of the coordinate bench of this Tribunal in the case of Ramgad Minerals & Mining Pvt Ltd Vs.ACIT in ITA No.1012/Bang/08 dt.9.4.2009 and find that in the cited case too a similar / identical issue was considered on the payments made towards contribution for compensatory afforestation as per the direction of the Hon'ble Apex Court when the mines are exploited on forest land. The Hon'ble Tribunal in para 5 of its order held that the amount expended on this count was incurred as a revenue expenditure and was directed to be allowed in the year in which it was incurred. The operative part of the order in para 5 at pages 7 and 8 is extracted and reproduced hereunder :

" We find force in the submission of the learned counsel that payments to the government are to be paid once the mining lease is obtained and such payments are governed by various Acts along with the Apex Court making a ruling for State Governments to participate in the granting of mining lease by recovering compensation when their forests are uprooted. Therefore for this purpose, the funds are used for a natural regeneration which the assessee participates indirectly. Therefore at no point of time could it be said that the assessee had incurred a capital expenditure giving the assessee a benefit of enduring nature for the purpose of earning segmented income to render the same to income tax. In other words, the authorities below have not pointed out the income generated against the purported deferred Revenue expenditure so proposed by them in their impugned orders. The amount was incurred as a Revenue expenditure and is directed to be allowed in the year it has been incurred."

Respectfully following the decision of the co-ordinate bench of the Bangalore Tribunal, in the case of Ramgad Minerals & Mining P. Ltd. (supra), we hold that the entire expenditure of Rs.5,02,59,000 incurred by the assessee of net present value to CAMPA in the relevant period are to be allowed as revenue expenditure for Assessment Year 2004-05.

6. In the result the assessee's appeal is allowed.

ITA Nos.350 & 351/Bang/2011 (Assessment Year 2005-06)

7. The above are cross appeals for Assessment Year 2005-06 by both the assessee and revenue against the order of the CIT(Appeals)-V, Bangalore dt.28.1.2011.

8. The facts of the case, in brief, are as under :

8.1 The assessee, a Govt. of Karnataka undertaking engaged in the business of mining of iron ore, other minerals and granite filed its return of income for Assessment Year 2005-06 on 29.3.2006 declaring total income of Rs.46,99,74,790. The return was processed under section 143(1) of the Act and the case was taken up for scrutiny. The assessment was completed by the Assessing Officer by an order under section 143(3) of the Act on 28.12.2007 determining the income of the assessee at Rs.67,18,29,004 by making the following additions/disallowances :

i) Shortage in closing stock	Rs.35,99,196
ii) Penalty in respect of ESI/PF payments	Rs.13,64,392
iii) Sales to Kayani Steels Ltd at rates below market rate	Rs.15,51,45,117
iv) Disallowance of interest	Rs.6,00,000
v) Disallowances out of sales promotion expenses	Rs.10,00,000
vi) Disallowance of brought forward losses pertaining to A.Y.2004-05	Rs.4,01,57,980

8.2 Aggrieved by the order of assessment dt.28.12.2007, the assessee went in appeal before the CIT(Appeals) who disposed off the appeal by order dt.28.1.2011 in which the learned CIT(Appeals) sustained the additions/disallowances listed above at items (i), (ii), (v) and (vi) and deleted the additions at (iii) and (iv) above.

8.3 Both the assessee and revenue are in appeal before us against the order of the learned CIT(Appeals) dt.28.1.2011.

ITA 350/Bang/2011

8.3.1 The assessee in its appeal ITA No.350/Bang/2011 has raised the following grounds as extracted hereunder :

- " 1. The order of the authorities below 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 itself liable to be on a total income assessed over and above the total income declared by the appellant of Rs.46,99,74,790 under the facts and circumstances of the case of the appellant.*
- 3. The authorities below are not justified in law in disallowing the brought forward losses of earlier years amounting to Rs.4,01,57,980 under the facts and circumstances of the case.*
- 4. The authorities below are not justified in law in adding a sum of Rs.35,99,196 under the head shortage inclosing stock, under the facts and circumstances of the case.*
- 5. The authorities below are not justified in law in disallowing the payments made to ESI and PF amounting to Rs.13,64,392 under the facts and circumstances of the case.*
- 6. The authorities below are not justified in law in disallowing sale promotion expenses to the extent of Rs.10,00,000 under the facts and circumstances of the case.*
- 7. The appellant denies itself liable to be charged to interest under section 234A, 234B and 234C of the Income Tax Act, 1961, under the facts and circumstances of the case.*
- 8. The appellant craves leave to add, alter, substitute and delete any or all of the grounds of appeal urged above.*
- 8. In the view of the above and other grounds to be urged at the time of hearing of the appeal, the appellant prays that the appeal may be allowed in the interest of justice and equity."*

8.4 We have heard both parties at length and carefully perused the material on record and the submissions made and dispose of the assessee's appeal as under : .

9. The grounds of appeal raised at S.Nos.1, 2, 8 and 9 are general in nature and therefore no adjudication is called for thereon.

10. The ground raised at S.No.7 challenges the charging of interest under section 234A and 234B of the Act in the present case. The charging of interest is consequential and mandatory in nature and the Assessing Officer has no discretion in the matter and therefore his action in doing so is held to be in order.

11.1 In the ground raised at S.No.3, the assessee has challenged the authorities below in disallowing the brought forward losses of Assessment Year 2004-05 amounting to Rs.4,01,57,980. The Assessing Officer had disallowed the brought forward losses of Rs.4,01,57,980 pertaining to Assessment Year 2004-05 on the ground that the assessee had filed a loss return belatedly on 9.3.2006 which is beyond the due date under section 139(1) of the Act and therefore was not permitted to carry forward the same. The learned CIT(Appeals) at para 3 of his order has observed that the assessee had filed its original return of income for Assessment Year 2004-05 on the due date specified under section 139(1) of the Act and that the loss return which is a revised return was filed on 9.3.2006. We notice from the order of the learned CIT(Appeals) that the revised return is filed on 9.3.2006 which is within the last date prescribed under section 139(5) of the Act which in the instant case is 31.3.2006. The record show that the assessee had filed the original return of income for Assessment Year on 1.11.2004 (31.10.2004 being a Sunday), which is in time under section 139(1) of the Act and therefore had time to revise

his return of income under section 139(5) of the Act on or before 31.3.2006. The fact that the revised return of income was filed on 9.3.2006 does not deprive the assessee from carrying forward the losses, if any, of the Assessment Year 2004-05.

11.2 Further, the loss returned by the assessee for Assessment Year 2004-05 was not accepted in full in the assessment proceedings for the said year and in fact the income determined by the Assessing Officer was enhanced by the learned CIT(Appeals) in the appellate proceedings. We have, however, in ITA No.679/Bang/2010 (supra) allowed the appeal of the assessee and the loss, if any, determined on giving effect to our order in the said case, shall be permitted to be carried forward to the subsequent assessment years and be eligible for set off in accordance with the provisions of section 72 of the Act. In this view of the matter, this ground of appeal is allowed.

12.1 Ground of appeal No.4 challenges the addition of Rs.35,99,186 claimed by the assessee on account of shortage in physical stock. The Assessing Officer in the course of assessment proceedings found that while valuing the closing stock as on 31.3.2005, the assessee had claimed shortages in respect of certain minerals and written off the value of the same. The Assessing Officer sought the explanation of the assessee for these shortages. The reasons adduced by the assessee was that these shortages arise as a result of handling of such materials; materials getting washed away due to heavy rains; etc which are beyond the control of the management and are in the normal course of business. The explanations put forward by the assessee were not found acceptable or satisfactory and he noted that the assessee was in the habit of claiming huge losses / shortages over a

period of time. The learned CIT(Appeals) in his order has concurred with the views taken by the Assessing Officer.

12.2 The learned counsel for the assessee argued that material like limestone which in the main item written off as well as other items like aluminous clay, etc are definitely subject to the vagaries of nature / weather. He further stated that the shortage is borne out of the fact of a physical inventory being conducted and therefore written off. The learned counsel for the assessee also argued that the assessee being a Govt. company, there is no vested interest, unlike a privately owned company, to deliberately under value stock in order to suppress profits as neither the assessee nor its shareholders benefit out of such suppression and that it is better to account for such shortages so that the reasons for the same can be gone into and corrective measures taken. Further, the learned Authorised Representative contends that the fact that the assessee has returned an income of Rs.47 Crores, it does not sound plausible that it will deliberately suppress income to the extent of Rs.37 lakhs which is less than 1% of the income declared and therefore pleaded for deletion of this addition.

12.3 Per contra, the learned Departmental Representative supported the findings in the orders of the authorities below and prayed for confirmation of their orders on this issue.

12.4 We have heard both parties and carefully perused the material on record. On a perusal of the order of assessment, we find that the Assessing Officer has dealt with this issue at length. It is seen that this item of shortage of closing stock is not a one off thing. The record show that the assessee claim's such shortages year after year. In the immediately preceding year, the assessee claimed shortage of stock to the tune of

Rs.22,377 metric tones and in the current year the shortages written off were 13,187 metric tonnes. As pointed out by the Assessing Officer, it is unlikely that granite blocks etc could be lost due to winds or rain and the claim made by the assessee we find are certainly without any basis to establish them with any evidence. The learned CIT(Appeals) too has been categorical in his order in observing that the shortages claimed are without any basis; that the assessee claims such shortages year on year and that nothing appears to have been done by the management to prevent such leakages. In this factual situation, we are of the considered view that the assessee's claim of shortages of closing stock cannot be accepted as except for putting forth the same explanation to us as before the authorities below, we find that the assessee has failed to bring on record any evidence to establish that such shortages had in fact occurred at all. We, therefore, having no reason to interfere with the findings of the authorities below on the issue of shortages in closing stock, dismiss the assessee's ground.

13.1 The next ground at S.No.5 is with regard to the disallowance of payments of Rs.13,49,849 and Rs.14,543 on account of delay in remittances of PF/ESI respectively. We find from a perusal of the record and the details filed by the assessee that the payments to the extent of Rs.13,64,392 (viz. Rs.13,49,849 plus Rs.14,543) have been made before the due date for filing of the return of income by the assessee during the relevant period. In view of the decision of the Hon'ble Apex Court in the case of CIT Vs. Alom Extrusions Ltd reported in (2009) 319 ITR 306 (SC) and of the Hon'ble Karntaka High Court in the case of CIT & Another Vs. Sabari Enterprises reported in (2008) (298 ITR 141) (Kar) and respectfully following the same hold that the payment of Rs.13,64,392 on

account of PF/ESI being made within the due date as per the I.T. Act, 1961 are allowable deductions and therefore delete the disallowance / addition made on this count by the Assessing Officer.

14.1 The next issue raised in ground No.6 is with regard to disallowance of a portion of sales promotion expenses to the tune of Rs.10 lakhs on an estimated basis for the reason that the same was significantly higher than in the immediately preceding year. The Assessing Officer in assessment proceedings noticed that the expenses claimed on sales promotion in the relevant period was Rs.43,36,645 as against Rs.16,30,703 in the immediately preceding year. On being asked to explain the steep rise in such expenditure, the Assessing Officer noted that the assessee could not produce any details thereof and he therefore proceeded to make adhoc disallowance of Rs.10 lakhs. Before the learned CIT(Appeals) the assessee argued that the turnover having increased, these expenses were justified as they were expended primarily with the objective of increasing sales. However, the learned CIT(Appeals) rejected the assessee's claims recording that the assessee was unable to furnish any details of this expenditure and justification thereof.

14.2 Before us also the learned counsel for the assessee put forth the argument that the sales promotion expenses claimed were justified since the turnover had increased from Rs.58,56,28,396 in the immediately preceding year relevant to Assessment Year 2004-05 to Rs.111,18,45,360 in the current year therefore justifying the increase in sales promotion expenses from Rs.16,30,703 to Rs.43,36,645. It was further contended that the fact that the accounts were audited and expenses were vouched no disallowance was called for on an adhoc basis.

14.3 Per contra, the learned Departmental Representative supported the orders of the authorities below.

14.4 We have heard both parties and carefully perused the material on record. It is a matter of record and not disputed that the turnover of the assessee has increased from 58,56,28,396 in the immediately preceding year to Rs.111,18,45,360 in the current year. We find that the sales promotion expenses have increased from Rs.16,30,703 in the immediately preceding year to Rs.43,36,645 in the current year. However though the accounts are said to be audited, it is noted both in the order of assessment and the order of the learned CIT(Appeals) that no details and supporting evidences have been produced to establish the expenses claimed for which the assessee has failed to discharge the onus upon it. Even before us, no details or supporting evidences have been filed to establish that the expenses on sales promotion claimed have in fact been spent. Further, interestingly, we also find that while the turnover in the immediately succeeding year relevant to Assessment Year 2006-07 has increased to Rs.181 Crores, the sales promotion expenses claimed have reduced by more than 50% to Rs.19.70 lacs. In this factual situation of the expenses claimed under this head in the preceding and succeeding years, we are of the considered view that the sales promotion expenses claimed in this year is excessive and in the absence of the assessee filing the details and supporting evidences of having incurred sales promotion expenses as claimed, the Assessing Officer was both reasonable and justified in disallowing only Rs.10 lakhs out of sales promotion expenses in the relevant period and therefore sustain the same. The assessee's ground is accordingly dismissed.

15. In the result, the assessee's appeal in ITA 350/Bang/2011 for Assessment Year 2005-06 is partly allowed.

ITA No.351/Bang/2011 (A.Y. 2005-06)

16. Revenue in its appeal in ITA No.351/Bang/2011 for Assessment Year 2005-06 has raised the following grounds which are extracted hereunder :

- " 1. The order of the learned CIT (Appeals) is opposed to law and facts of the case.*
- 2. The learned CIT (Appeals) erred in deleting the addition of Rs.15,51,45,117 on account of difference between sales recorded in the books and sales Revenue that accrued to the assessee on the basis of rates as per the terms of marketing agreement with M/s. Kalyani Steels.*
- 3. The learned CIT (Appeals) ought to have appreciated the fact that the assessee has no justification for raising the invoices at a rate lower than the rate as per the terms of marketing agreement with M/s. Kalyani Steels causing loss to public exchequer which has been investigated and reported by Karnataka Lokayukta.*
- 4. the CIT (Appeals) is not justified in deleting disallowance of interest of Rs.6,00,000 holding that in view of the disallowance of interest expenditure of Rs.17.93 lakhs made under section 40a(ia) no separate disallowance of interest on account of using interest bearing funds for non-business purposes is called for. The CIT (Appeals) ought to have appreciated that the assessee is entitled to claim deduction of Rs.17.93 lakhs disallowed under section 40a(ia) on remitting TDS to Govt. account in a subsequent year. The disallowance of Rs.6 lakhs has been made by the Assessing Officer for not charging interest on the amount of Rs.2 Crores paid to Vijayanagar Ispat Ltd., although the assessee was paying interest to Kalyani Steels on borrowed funds.*
- 5. For these and other grounds that may be urged at the time of hearing, it is prayed that the order of the CIT (Appeals) in so far as it relates to the above grounds may be reversed and that of the Assessing Officer may be restored.*
- 6. The appellant craves leave to add, alter, amend and / or delete any of the grounds mentioned above."*

17. The grounds raised at S.Nos.1, 5 and 6 are general in nature and therefore no adjudication is called for thereon.

18.1 The grounds at S.Nos.2 and 3 are in respect of the deletion by the learned CIT(Appeals) of the addition of Rs.15,51,45,117 made by the Assessing Officer on account of the difference in the sales recorded in the books of the assessee and the sales revenue accrued to the assessee on the basis of the marketing agreement with M/s. Kalyani Steels Ltd. The assessee entered into an agreement dt.17.1.2002 for extraction of iron ore at Subbarayanahalli and Jambunathahalli Mines and would pay M/s. Kalyani Steels Ltd Rs.198 per M.T. of C-ore and Rs.25 per M.T. of iron ore fines. The C-ore so raised was to be purchased by M/s. Kalyani Steels Ltd @ Rs.253 per M.T. which is valid till 31.3.2005. In the course of assessment proceedings, the Assessing Officer found that the assessee sold C-ore to M/s. Kalyani Steel Mines @ Rs.253 per M.T. whereas the market rate ranged between Rs.409.80 to Rs.459.92 per M.T. as per the MMTC rate list. In response to question raised by the Assessing Officer, the assessee replied that the sale of C-ore to Kalyani Steels Ltd was as per agreement entered into with this party by the assessee and the rates charged were as per contractual obligations of the said agreement. The Assessing Officer after examining the rates charged per M.T. of C-ore by the assessee to M/s. Kalyani Steels Ltd over a number of years was not convinced by the explanation put forth by the assessee with regard to the price of Rs.253 per M.T. charged from M/s. Kalyani Steels. The Assessing Officer adopted the market value of Rs.459.92 per M.T. in place of Rs.253 per M.T. and worked out the total sale amount to M/s. Kalyani Steels Ltd at Rs.34,48,40,240 as against Rs.18,96,95,123 and brought the difference of Rs.15,51,45,117 (i.e. Rs.34,48,40,240 less Rs.18,96,95,123) to tax as net income of the assessee as all possible expenses claimed had been allowed. In appellate proceedings, the

learned CIT(Appeals) allowed the assessee's appeal on this issue by deleting the addition of Rs.15,51,45,117 holding as under in para 7 at page 7 of his order :

" 7. I have carefully considered the contentions of both the Assessing Officer and the appellant. Under the Income Tax Act what is to be taxed is the real income and not the notional income. The appellant company had furnished all the details required by the Assessing Officer and the agreement between the appellant company and Kalyani Steels made provision for revision of sale price of C-ore only after 17.01.2005. Therefore, the Assessing Officer is not justified in making the addition on account of low sale price. In view of this the addition made by the Assessing Officer amounting to Rs.15,51,45,117 is deleted."

18.2 The learned Departmental Representative strongly supported the grounds raised and submitted that the learned CIT(Appeals) had erred in deleting the addition of Rs.15,51,45,117 made by the Assessing Officer. It was submitted that the issue of rates of sales of C-ore @ Rs.253 per M.t. by the assessee to M/s. Kalyani Steels Ltd when the market rates were quite high had been examined at length and dealt with elaborately by the Assessing Officer in the order of assessment at para 9.1 to 9.8 thereof and was wrongly deleted by the learned CIT(Appeals). It was further contended that the assessee's arguments that it was making payment as per long term contractual agreements with Kalyani Steels Ltd does not hold water especially for the reason that the C-ore was sold by the assessee at rates far below prevailing market rates. As per the record and media reports referred by the Assessing Officer, it appears that the report of the Mining Scam investigated by the Karnataka Lok Ayukta was submitted on 18.12.2009 which mentions alleged malpractice on the part of the Minister for Mining and officials of the assessee company. In this view of the matter, the learned Departmental

Representative prayed for the finding of the learned CIT(Appeals) be reversed and that of the Assessing Officer be restored.

18.3 The learned counsel for the assessee strongly supported the findings in the order of the learned CIT(Appeals) submitting that all details of the assessee's dealings with M/s. Kalyani Steels Ltd in the matter of sale of C-ore were placed before the authorities below and it is only on a proper appreciation of the same, the learned CIT(Appeals) has held in favour of the assessee.

18.4 We have heard both parties and carefully perused and considered the material on record. We find from the record that the assessee has furnished all the details required by the Assessing Officer. From the details on record in respect of the additions made to the returned income on account of sales to M/s. Kalyani Steels Ltd below market price, we agree with the observations of the Assessing Officer that the price charged for C-ore is below the market price. We also observe that the Assessing Officer has recorded that Karnataka Lok Ayukta in its report on the Mining Scam alleged malpractices on the part of the officials of the assessee company. From the submissions made by the assessee, a Govt of Karnataka Undertaking, it can be inferred that the sales of C-ore to Kalyani Steels Ltd are supported by invoices raised, entries in the books of accounts audited by Chartered Accountants. The system of accounting followed by the assessee is the Mercantile System as per the provision of section 145 of the Act and we find that no fault has been found therein nor has it been rejected. Nowhere in the order of assessment or the material on record do we find anything to establish that there were any realization on account of sales beyond what is recorded in the books of accounts. As per the I.T. Act,

1961 profits from business are to be computed under section 28 of the Act as per the accounting policies mandated by section 145 of the Act which in the assessee's case is the Mercantile System. The scope of total income is also defined under section 5 of the Act. The I.T. Act, 1961 is very clear that what is to be taxed is the real income of an assessee and not notional or hypothetical income and it does not permit an Assessing Officer to compute income without any evidence. There is no finding by the Assessing Officer that the assessee has sold its C-ore at a price less than that agreed to in the contract entered into with M/s. Kalyani Steels Ltd or that it has realized from M/s. Kalyani Steels Ltd additional amounts on such sales which it had not recorded in its books. The assessee is legally bound to abide with the terms of the contractual obligations arising out of its agreement to sell C-ore to M/s. Kalyani Steels Ltd and the contract entered into being legal and valid, it cannot be brushed aside. After taking into account the facts and circumstances of the case on this issue, we find that no evidence whatsoever has been brought on record by the Assessing Officer to establish that the assessee has realized from the sale of C-ore to M/s. Kalyani Steels Ltd more than what is recorded in the assessee's books of account. In this view of the matter, the addition made on account of sales to M/s. Kalyani Steels Ltd below market rate, in our considered opinion is not founded on sound and accepted accounting and legal principles and is therefore liable to be deleted. We, therefore, find no reason to interfere with the decision of the learned CIT(Appeals) in deleting the addition of Rs.15,51,45,117. The grounds at S.Nos.2 and 3 raised by revenue are accordingly dismissed.

19.1 In the ground raised at S.No.4, revenue has challenged the deletion by the learned CIT(Appeals) of the disallowance of interest amounting to Rs.6 lakhs made by the Assessing Officer on the advance given to Vijayanagar Ispat P Ltd (VIPL).

19.2 The learned Departmental Representative submitted that in the course of assessment proceedings, the Assessing Officer noticed that the assessee had availed an interest bearing advance of Rs.6 Crores on which it paid interest of Rs.17,93,583. The Assessing Officer also noticed that the assessee had advanced a loan of Rs.2 Crore to M/s. VIPL on which no interest was charged. The Assessing Officer, the learned Departmental Representative submitted, worked out interest chargeable on the loan of Rs.2 Crores at Rs.6 lakhs and added it to the assessee's returned income. It was contended that the learned CIT(Appeals) however deleted the same without appreciating that the fact that the assessee was paying interest on loans taken from M/s. Kalyani Steels Ltd whereas it was advancing interest free loans to M/s. VIPL. It was prayed that the learned CIT(Appeals)'s finding be reversed and the disallowance of Rs.6 lakhs made by the Assessing Officer be restored.

19.3 Per contra, the learned counsel for the assessee supported the orders of the learned CIT(Appeals) deleting the interest of Rs.6 lakhs the advance to M/s. VIPL was made in an earlier period and a relation is in no way party to the assessee.

19.4 We have heard both parties and carefully perused the material on record. We find from the record that, it is not the case of the Assessing Officer that VIPL to whom the amount of Rs.2 Crores was given, is a sister concern of the assessee. It also appears that the Assessing Officer failed to appreciate the reasons for advancing of this amount by

the assessee. The Assessing Officer failed to establish any direct nexus that the sum of Rs.2 Crores given to VIPL was out of Rs.6 Crores advanced by M/s. Kalyani Steels Ltd. The learned CIT(Appeals) in his order has also given a finding that the amount advanced to VIPL is done in the earlier years and not in the impugned year. In this factual matrix, we do not find any reason to interfere with the decision of the learned CIT(Appeals) deleting the addition of Rs.6 lakhs made by the Assessing Officer. This ground No.4 raised by revenue is, therefore dismissed.

19.5 In the result, revenue's appeal in ITA 351/Bang/2011 is dismissed.

ITA No.680/Bang/2010 & 733/Bang/2010 (A.Y.2006-07)

20. The above are cross appeals for Assessment Year 2006-07 by both the assessee and revenue against the order of the Commissioner of Income Tax (Appeals)-III, Bangalore dated 17.2.2010.

21. The facts of the case, in brief, are as under :

21.1 The assessee, a Govt of Karnataka Undertaking engaged in the business of mining iron ore, other materials and granite, filed its return of income for Assessment Year 2006-07 on 30.11.2006 declaring income of Rs.46,99,74,790. The return was processed under section 143(1) and the case was taken up for scrutiny. The assessment was completed by an order under section 143(3) of the Act on 22.12.2008 determining the income of the assessee at Rs.100,40,63,010 by making the following additions / disallowances.

- | | |
|---|------------------|
| i) Shortage in closing stock | Rs.1,17,71,039. |
| ii) Sales to Kalyani Steels Ltd at rates below market rates | Rs.19,00,59,451. |

iii) Disallowances of sales promotion expenses

Rs.5,00,000.

21.2 Aggrieved by the order of assessment for Assessment Year 2006-07 dt.22.12.2008, the assessee went in appeal before the CIT(Appeals). The learned CIT(Appeals) disposed off the appeal by an order dt.17.2.2010 in which the learned CIT(Appeals) sustained the additions listed above at items (i) and (iii) & deleted the addition listed at item (ii).

22.0 Both the assessee and Revenue are in appeal before us against the order of the learned CIT (Appeals) dt.17.2.2010.

23.0 The assessee has raised the following grounds which are extracted hereunder :

" 1. The order of the authorities below in so far as it is against the appellant, is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the appellant's case.

2. The authorities below are not justified in law in adding a sum of Rs.;1,17,71,039 under the head shortage in the closing stock of inventories under the facts and circumstances of the case.

3. The authorities below failed to appreciate the fact that shortage of the closing stock is due to various factors which in any kind of industry normally occurs under the facts and circumstances of the case.

4. The authorities below are not justified in disallowing sales promotion expenses to the extent of Rs.5,00,000 on the facts and circumstances of the case.

5. The additions made by the learned Assessing Officer is arbitrary and based on pure suspicions and surmises under the facts and circumstances of the case.

6. The appellant denies itself liable to be charged to interest under section 234B and 234C of the Income Tax Act, 1961, under the facts and circumstances of the case.

7. The appellant craves leave to add, alter, delete or substitute any or the grounds urged above.

8. In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the appellant prays that the appeal may be allowed in the interest of justice and equity."

24. The grounds raised at S.Nos.1, 5, 7 and 8 are general in nature and therefore no adjudication is called for thereon.

25. The ground raised at S.No.6 challenges the charging of interest under section 234A and 234B of the Act in the assessee's case. The charging of interest is consequential and mandatory and the Assessing Officer has no discretion in the matter. Therefore, his action in doing so is held to be in order. The Assessing Officer is, however, directed to recompute the interest chargeable, if any, under section 234B and 234C of the Act while giving effect to this order.

26. In the grounds of appeal at S.Nos.2 and 3, the assessee challenges the learned CIT (Appeals)'s order sustaining the addition of Rs.1,17,71,039 made on account of shortage in closing stock. The very same issue was considered and decided by us in the appeal of the assessee in ITA No.350/Bang/2011 for Assessment Year 2005-06 at paras 12.1 to 12.4 of this order. For the reasons given therein, we follow the same for this year also and sustain the addition of Rs.1,17,71,039 made by the Assessing Officer and confirmed by the learned CIT (Appeals) on account of shortage in closing stock.

27. In the ground of appeal at S.No.4, the assessee challenges the disallowance of Rs.5 lakhs made by the Assessing Officer and confirmed by the learned CIT (Appeals) from out of sales promotion expenses. The very same issue was considered and decided by us in the appeal of the assessee in ITA No.350/Bang/2011 for Assessment Year 2005-06 at paras 14.1 to 14.4 of this order. For the reasons given therein, we follow the same for this year also and sustain the addition of Rs.5 lakhs made by the Assessing Officer from out of sales promotion expenses.

28. In the result, the assessee's appeal in ITA No.680/Bang/2010 for Assessment Year 2006-07 is dismissed.

ITA No.733/Bang/2010 (Assessment Year 2006-07)

29. Revenue in its appeal in ITA No.733/Bang/2010 for Assessment Year 2006-07 has raised the following grounds which are extracted hereunder :

- " 1. The order of the learned CIT (Appeals) is opposed to law and facts of the case.*
- 2. The learned CIT (Appeals) erred in deleting the addition of Rs.19,00,59,451 on account of difference between sales recorded in the books and sales Revenue that accrued to the assessee on the basis of rates as per the terms of marketing agreement with M/s. Kalyani Steels.*
- 3. The learned CIT (Appeals) ought to have appreciated the fact that the assessee has no justification for raising the invoices at a rate lower than the desired rate causing loss to public exchequer which has been investigated and reported by Karnataka Lokayukta.*
- 4. For these and other grounds that may be urged at the time of hearing, it is prayed that the order of the CIT (Appeals) in so far as it relates to the above grounds may be reversed and that of the Assessing Officer may be restored.*
- 5. The appellant craves leave to add, alter, amend and / or delete any of the grounds mentioned above."*

30. The grounds raised at S.Nos.1, 4 & 5 are general in nature and therefore no adjudication is called for thereon.

31. The grounds at S.Nos.2 & 3 are raised in respect of the deletion by the learned CIT (Appeals) of the addition of Rs.19,00,59,451 made by the Assessing Officer on account of the difference in the sales recorded in the books of the assessee and sales Revenue accrued to the assessee on the basis of the marketing agreement with M/s. Kalyani Steels Ltd. The very same issue was decided by us in Revenue's appeal in ITA No.351/Bang/2011 for Assessment Year 2005-06 at para 18.1 to 18.4 of this order. For the reasons given therein, we follow the same for this year also and accordingly uphold the

learned CIT (Appeals)'s action in deleting the addition made by the Assessing Officer on this issue. Revenue's ground is, therefore, dismissed.

32. In the result, Revenue's appeal in ITA No.733/Bang/2010 for Assessment Year 2006-07 is dismissed.

Order pronounced in the open court on 2nd Nov., 2012.

Sd/-

(N.V. VASUDEVAN)
Judicial Member

Sd/-

(JASON P BOAZ)
Accountant Member

*Reddy gp

Copy to :

1. Appellant
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, - C Bench.
6. Guard File.

(True copy)

By Order

Sr. Private Secretary, ITAT, Bangalore