

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री भागचन्द, लेखा सदस्य एवं श्री कुल भारत, न्यायिक सदस्य के समक्ष
BEFORE: SHRI BHAGCHAND, AM AND SHRI KUL BHARAT, JM

आयकर अपील सं./ITA No.1018/JP/2015
निर्धारण वर्ष/Assessment Year : 2011-12.

The Asstt. Commissioner of Income –Tax, Circle-1, Jaipur.	बनाम Vs.	M/s Bright Metal (India) Pvt. Ltd., 158-159, Mendwas House, Nehru Bazar, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AAACB 9670 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से/ Revenue by: Shri R.A. Verma (Addl.CIT)
निर्धारिती की ओर से/ Assessee by : P.C. Parwal (C.A.)

सुनवाई की तारीख/ Date of Hearing : 29.05.2017.
घोषणा की तारीख/ Date of Pronouncement : 07/06/2017.

आदेश / ORDER

PER SHRI KUL BHARAT, JM.

The Appeal by the Revenue is directed against the order of Ld. CIT(Appeals)-
I, Jaipur dated 27.10.2015 pertaining to Assessment Year 2011-12.

The Revenue has raised the following revised grounds of appeal :-

- "1. Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in reducing the disallowance made by the AO on the issue of loss on commodity trading from Rs. 92,87,247/- to Rs. 22,56,457/- without appreciating facts and circumstances of the case.
 2. Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in accepting additional evidence i.e. statement containing its stock position (raw material and finished goods) and to compare it with the quantity of forward sales (enclosed as annexure-A) in violation of rule-46A of IT Rules."
2. Ground nos. 1 & 2 are inter- connected and against reducing the disallowance made on account of loss on commodity trading of Rs. 92,87,247/- to Rs. 22,56,457/-

and against the acceptance of additional evidence i.e. statement containing its stock position in violation of rule-46A of IT Rules, 1962.

3. Briefly, stated facts are that the case of the assessee was picked up for scrutiny assessment and the assessment u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the Act) was framed vide order dated 06/03/2014. While framing the assessment, the AO made disallowance of Rs. 92,87,247/- claimed as business expenses under the category of Administrative and Other Expenses. The assessee before the AO had claimed that this expenses, being the loss on account of currency fluctuation and the raw material price fluctuation. This explanation of the assessee was not accepted by the AO.

4. Aggrieved by this, the assessee preferred and appeal before Ld. CIT(A). The Ld. CIT(A) during the appellate proceedings clause 4A of statement containing the stock position and sustained the addition of extent of Rs. 22,56,457/-, the AO was further directed to verify the working of this stock position as submitted by the assessee and rectify the figures of speculative loss, accordingly. Against this, the Revenue is in appeal before this Tribunal.

Ld. D/R submitted that the, Ld. CIT(A) was not justified in reducing the disallowance and directing the AO to verify the figures submitted during the course of appellate proceedings. He submitted that Ld. CIT(A) was not correct in accepting the working given by the assessee during the appellate proceeding without calling for remand report from the AO. He submitted this act of the Ld. CIT(A) is in violation of rule 46A of the Income Tax Rules 1962.

5. On the contrary, Ld. Counsel for the assessee supported the order of the Ld. CIT(A) and submitted that there is not infirmity into the order of the Ld. CIT(A).

The Ld. CIT(A) has rightly reduced the addition, he further submitted that there is no violation of Rule 46A as claimed by the Ld. DR. He drew our attention to the relevant rules and more particularly sub-Rule 4 of Rule 46A.

6. We have heard the rival contentions, perused the material available on record and gone through the order of the authorities below. The Ld. CIT(A) in his order has observed as under:-

"(ix) It is evident from the above details that these forward sales were in the nature of speculative transactions and the loss arises thereon is in the nature of speculative loss. Therefore, it is held that out of loss of Rs. 92,87,247/- claimed by the appellant company as hedging loss and treated by the AO as speculative loss, the speculative loss is to the tune of Rs. 22,56,457/- only as worked out in the above table. Therefore, addition of Rs. 22,56,457/- is sustained as speculative loss. The AO is directed to verify the above working by observing the principles as laid down in the case of Sopropa SA (Supra) and to rectify the figures of speculative loss, if any, accordingly."

6.1 The grievance of the Revenue is that, the Ld. CIT(A) has acted in violation of Rule 46A in considering the details filed by the assessee during the course of appellate proceedings without calling for remand report from the AO. For the sake of clarity sub-Rule 4 Rule 46A is reproduced here and below:-

"46A. (1) The appellant shall not be entitled to produce before the [Deputy Commissioner (appeals)] [or, as the case may be, the Commissioner (Appeals)], any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the [Assessing Officer], except in the following circumstances namely:-

(a) Where the [Assessing Officer] has refused to admit evidence which ought to have been admitted; or

(b) Where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the [Assessing Officer]; or

(c) Where the appellant was prevented by sufficient cause from producing before the [Assessing Officer] any evidence which is relevant to any ground of appeal; or

(d) Where the [Assessing Officer] has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any grounds of appeal.

(2). No evidence shall be admitted under sub-rule (1) unless the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] records in writing the reasons for its admission.

(3) The [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] shall not take into account any evidence produced under sub-rule(1) unless the [Assessing Officer] has been allowed a reasonable opportunity-

(a) to examine the evidence or document or to cross-examine the witness produced by the appellant, or

(b) to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.

(4) Nothing contained in this rule shall affect the power of the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty (whether on his own motion or on the request of the [Assessing Officer] under clause (a) of sub-section (1) of section 251 or the imposition of penalty under section 271.]”

6.2 A bare reading of sub rule 4 makes it clear that the Commissioner (Appeal) may direct the production of any document or the examination of witness to enable him to dispose of the appeal or for any other substantial cause. We find merit into

the contention of the Ld. Counsel for the assessee that sub-Rule 1 of Rule 46A would not be applicable in the present case as the detail of stock was directed by the Ld. CIT(A) during the appellate proceedings to be furnished. Moreover, these evidences in the form of stock were available with the AO.

6.3 Under these facts, we do not see any infirmity into the Ld. CIT(A). Further the Ld. CIT(A) has given a finding on fact that these forward sales were in the nature of speculation transaction and the loss arises thereon is in the nature of speculative loss. This finding on fact is not controverted by the revenue by placing any contrary material on record. Hence, we do not see any merit into the grounds raised by the Revenue, same are dismissed.

7. In the result, Appeal of the Revenue in ITA No. 1018/JP/2015 is dismissed.

Order is pronounced in the open court on Wednesday, the 07th day of June 2017.

Sd/-
(भागचन्द)
(BHAGCHAND)
लेखा सदस्य / Accountant Member
Jaipur

Sd/-
(कुल भारत)
(KUL BHARAT)
न्यायिक सदस्य / Judicial Member

Dated:- 07/06/2017.

Pooja/

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- The ACIT, Circle-1, Jaipur.
2. The Respondent – M/s Bright Metal (India) Pvt. Ltd., Nehru Bazar, Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 1018/JP/2015)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

