

आयकर अपीलीय अधिकरण ,इन्दौर न्यायपीठ ,इन्दौर
**IN THE INCOME TAX APPELLATE TRIBUNAL,
 INDORE BENCH, INDORE**

श्री सी.एम.गर्ग ,न्यायिक सदस्य

तथा

श्री ओ.पी.मीना ,लेखा सदस्य के समक्ष

**BEFORE SHRI C. M. GARG, JUDICIAL MEMBER
 AND
 SHRI O.P. MEENA, ACCOUNTANT MEMBER**

आ.अ.सं /I.T.A. No.326/Ind/2016		
निर्धारण वर्ष/ Assessment Year : 2010-11		
ITO, 3(3), Indore.	vs.	M/s. Mungad Strips & Alloys Pvt.Ltd., 7, Nagarchi Bakhal Bazar, Indore
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent
स्था.ले.सं./PAN: AAFCM9363C		
अपीलार्थी की ओर से/Appellant by		Shri Mohd.Javed, DR
प्रत्यर्थी की ओर से/Respondent by		Shri Santosh Deshmukh, CA
सुनवाई की तारीख/Date of hearing		22.02.2017
उद्घोषणा की तारीख/Date of pronouncement		28.02.2017

आदेश /O R D E R

PER O.P. MEENA, ACCOUTANT MEMEBR.

This appeal is filed by the Revenue against the order of Id.
 Commissioner of Income tax (Appeals)-I, Indore,[hereinafter referred

to as the CIT (A)] dated 30.12.2015. This appeal pertains to Assessment Year 2010-11 as against appeal decided in respect of assessment order dated 28.03.2013 passed u/s 143(3)/147 of Income Tax Act, 1961(herein after referred to as "the Act) by the ITO Ward 1(2) Indore [hereinafter referred to as the AO]. The Revenue has taken following grounds of appeal:-

- (i) On the facts and the circumstances of the case, the ld.

CIT(A) :-

(1)erred in deleting the addition of Rs. 44,68,220/- whereas the same addition was made by the AO invoking the provision of Section 145(3) of the IT Act and estimated NP @ 8% on gross sales.

(2)erred in deleting the addition of Rs. 18,70,579/- made by the AO treating assessee's income from other sources whereas the same income was shown by the assessee in profit and loss account.

1.0 We are deciding both the grounds together. Ground no. 1 relates to deletion of addition of Rs. 44,68,220/- made by applying net profit rate of 8% after invoking the provisions of Section 145(3) of the Income-tax Act, 1961 and ground no.2 relates to addition of Rs.18,70,579/- by treating income from other sources.

1.1 Succinctly, facts as culled out from the orders of lower authorities are that the assessee is a Private Limited Company and deals in trading of aluminum conductor and aluminum scraps and makes sales on account of exports as well as domestic. The return of income was filed on 26.04.2011 declaring total income of Rs. 6,25,650/- under normal provisions of the Act and income of Rs. 4,00,419/- u/s 115JB of the Act. During the course of assessment proceedings, the assessee was asked to produce original books of accounts, copies of sale bills and purchase bills, audit report, bank statements etc. However, the assessee could not produce the sale bills, purchase bills, vouchers of expenses, property documents, expenses bills on the ground that these were lost in theft, while their Accountant was travelling by Train, for which FIR was also lodged with GRP at Ratlam. In support of his contention, the AO asked the assessee to produce the original copy of FIR, details regarding theft of books of accounts, original copy of audit report and all books of accounts, but the assessee could file only copies of purchase and sales bills, audit report, ledger account, copy of FIR. But the assessee could not file originals of these documents. The copy of audit report filed by the assessee was also bearing

signature of C. A. only but signature of Director of the company was not there. Therefore, the AO expressed his doubt on the veracity of the audit report. It was also noticed that total sales during the year were at Rs. 5,58,52,756/- as per the profit and loss account, whereas as per sales register, sales were appearing at Rs. 5,94,35,212/-. Thus, there was a difference in sales figure amounting to Rs. 35,82,456/-. Further, the AO has also got verification of sales through Commercial Tax Officer. The CTO vide his letter dated 26.03.2013 stated that the assessee company is registered with the Commercial Tax Department as on 03.03.2010 and for the period from 03.02.2010 to 31.03.2010. The assessee has shown total sales at Rs. NIL. Therefore, keeping in view all the above facts and non-production of original FIR in connection with the theft of books of accounts and important documents in connection with business activities i.e. the sales bills, purchase bills, vouchers, stock registers, cash memo and expenses bills. The books of accounts were rejected by the AO u/s 145(3) of the Income-tax Act, 1961. In support of rejection of books of accounts, the AO relied in the case of S.N.Namasivayam Chettiar vs. CIT, (1960) 38 ITR 579 (S. C.) and Awadesh Pratap Singh Abdul

Rehman & Brothers vs. CIT, (1994) 76 Taxman 106 (Alld.)

Accordingly, the AO has estimated the total income of the assessee by applying net profit rate of 8% on total sales of Rs. 5,58,52,756/-, which was worked out at Rs. 44,68,220/-. Accordingly, the same was added to the total income of the assessee. The AO also noticed that the assessee has shown income of Rs.18,70,576/- in profit and loss account, hence, same was also added to total income.

1.2 Being aggrieved, the assessee has filed an appeal before the ld. CIT(A). Before the ld. CIT(A), the assessee has placed copy of FIR stating that the original FIR could not be found. The assessee also produced all details of sales and purchase and has emphasized the fact that the trading activities were only taken during December to March, which were limited with only two parties, namely, M/s. Krishna Profile Private Limited Company and M/s. Overseas Metal Trading Company, U.A.E. The assessee also placed copy of the order of the Commercial Tax Authority contending that there was no variation in the sales declared by the assessee. As per the order of CTO, the sales of the assessee was same as shown by the assessee in its return of income. It was also contended that other income shown at Rs. 18,70,579/- was on account of DEPB licence,

which was duly documented and shown in the profit and loss account. It was also contended that the rates of purchase and sales from M/s. Krishna Profiles Limited were comparable with non other related parties. Considering all these facts, the ld. CIT(A) held that the rejection of books of accounts u/s 145(3) and estimated income @ 8 % on total sales is without any basis, hence, the addition of Rs. 44,68,220/- was deleted. As regards addition of Rs. 18,70,579/-, the ld. CIT(A) held that this is an income represented on account of DEPB incentive received on exports sales of Rs. 4,94,69,076/- for the exports made by the assessee, which has already been shown by the assessee in the profit and loss account as income from other sources. Hence, this addition was also deleted. Similarly, addition of Rs. 1 lakh made on account of unexplained share capital of the Director was also deleted.

1.3 Being aggrieved, the Revenue has filed this appeal before the Tribunal. The ld. DR contended that the assessee has failed to produce original copy of sale bills, purchase bills, vouchers, stock registers during the course of assessment proceedings. The contention of the assessee that books of accounts were stolen during travelling by their representative in Train for which FIR was

also lodged with GRP Ratlam, but the assessee has failed to produce original copy of FIR lodged with GRP, Ratlam, to establish that there was theft, wherein original documents like books of accounts, sale bills, purchase bills, vouchers of expenses and stock registers were stolen. Further, the audit report was also not filed in original and copy of audit report produced during the assessment proceedings were also not signed by the Director of the assessee company. Therefore, the authenticity of books of accounts was remained as doubtful. Further, the AO has also found variation in the sales disclosed to the Sales Tax Authorities and as disclosed by the assessee. Therefore, in absence of these original documents, which are very vital and material evidence, the AO was correct in invoking the provisions of Section 145(3) of the Act and estimating the income of the assessee by applying net profit rate of 8% on the disclosed sales of Rs. 5,58,52,756/-. As regards addition of Rs. 18,70,579/-, the ld. Authorized Representative of the assessee relied on the findings of AO and submitted that this is an income shown by the assessee in its profit and loss account and the same was considered by the AO for computation of income. Hence, the ld.

CIT(A) was not justified in deleting the same while deleting the total estimated sales made by the assessee.

1.4 The Id. Authorized Representative of the assessee submitted that the Id. CIT(A) was correct in deleting the addition of Rs. 44,68,220/- made by invoking the provisions of Section 145(3) and estimating the profit at 8 % pm disclosed sales. The Id. AR submitted that the books of accounts were rejected by the AO as there was variation in the sales shown in the sales register and as shown in the profit and loss account. However, the sales shown in the sale registers were including of excise duty and cess. Therefore, the same were shown at Rs. 5,94,35,212/- in sales register, whereas the actual sales excluding excise and cess are at Rs. 5,58,52,756/-. Further, the assessee has also filed copies of orders of Commercial Tax Authorities, which also shows the sales of assessee as declared by the assessee in his audit report and profit and loss account. The information obtained by the AO from Sales Tax Authorities was not correct as the same does not contain the sales shown by the assessee, whereas correct sales are disclosed to sales tax, which is reflected in their assessment order dated 04.11.2010. Therefore, rejection of books of accounts by the AO was

not justified and hence, the ld. CIT(A)'s finding in this regard is correct. As regards estimation of income @ 8% on total sales, the ld. Authorized Representative of the assessee submitted that there is no basis to adopt 8% as the profit on sales as the assessee is mainly engaged in the export sales, wherein profit margin is very low. Therefore, the ld. AR supported the order of the CIT(A).

1.5 We have considered the facts, rival submissions and perused the material available on record. We find that the assessee has failed to produce original copies of sale bills, purchase bills, stock registers and vouchers for expenses and also original copy of audit report. Further, the assessee has also failed to produce original copy of FIR lodged with the GRP, Ratlam and detailed note regarding theft of books of accounts and other documents and audit report as all the books of accounts evidencing that these were not available due to theft. We also find that the AO vide his questionnaire dated 10.12.2012 and 07.03.2013 had asked to produce the original books of accounts and other documents so that authenticity of its claim can be examined. It was also noticed by the AO that the copy of audit report were only signed by the C.A., but the same was not signed by the Director of the Company.

We further found that the reports submitted by the Commercial Tax Officer vide letter dated 26.03.2013 also showed that the assessee company was registered with them on 03.02.2010 and no sales for the period from 03.02.2010 to 31.03.2010 was shown. Further, the sales shown as per the sales register were at Rs. 5,94,35,212/-, whereas sales in profit and loss account were shown at Rs. 5,58,52,756/-. Hence, there was a difference of Rs. 35,82,456/-. We also find from the copy of the order of Sales Tax Authority dated 04.11.2010, wherein the assessee has shown gross sales in computation sheet at Rs. 6,03,44,734/-, which also shows that there is a variation in the sales shown by the assessee in profit and loss account and as per sales registers as well as sales to the Sales Tax Authorities. Further, the Sales Tax Authorities has also pointed out the variation of sales amounting to Rs. 4,72,299/- in their assessment order dated 04.11.2010. In the light of these facts and circumstances of the case, we are of the considered opinion that the AO was correct in invoking the provisions of Section 145(3) of the Act, as in absence of non-production of original documents, audit report, sales and purchase bills, vouchers of expenses and FIR, profit from the books of accounts cannot be deduced properly.

Therefore, we are of the view that the AO was justified in invoking the provisions of section 145(3) of the Act.

1.5.1 As regards the application of net profit rate at 8 % on the total sales, we find that the assessee has shown net profit at Rs. 4,00,419/- profit before tax on total sales at Rs. 5,58,52,756/-, in its profit and loss account which gives the net profit rate of 0.72 %, which appears to be on lower side. We also find from the submission made by the assessee before the CIT(A) that the assessee has given certain examples of sales and purchases and gross margin according to which gross profit comes to 2.01 % on some export sales and 1.96% on transaction with reference to domestic sales (page 12 of appeal order). We also find from the submission of the assessee as appearing at page 21 of appellate order, which reads as under :-

“This net margin has to be practically considered after the DEPB to be received by the company which is Rs. 18,70,579/-, if we add this DEPB the gross margin of the company works out to [(10,35,980 + 18,70,576)/5,59,47,136/-] which is 5.20% of the total sales. This show that the gross profit margin of a trading concern showing at 5.20% is a reasonable margin and requires no addition.”

Thus, the assessee has claimed that the gross profit of the trading concern is at 5.2 % as against net profit of 8% considered by the AO

after rejection of books of accounts. We also find that the assessee has shown net profit in profit and loss account at Rs. 4,00,419/- on the total sales of Rs. 5,58,52,756/- in the profit and loss account which gives net profit rate at 0.72 % only. Therefore, considering all these facts, we are of the considered opinion to adopt the gross profit rate at 6% which in our view would be just, fair and reasonable in the case of the assessee. Accordingly, gross profit is worked out at Rs.33,51,165/- by applying 6% gross profit on total sales of Rs. 5,58,52,756/-. Considering the claim of the assessee, the deduction/ set-off on account of DEPB income of Rs. 18,70,576/- would also be available to the assessee as set-off as the assessee has already shown this income in profit and loss account. Therefore, net income is worked out at Rs. 14,80,589/- (33,51,165-18,70,576) as against the income computed at Rs. 44,68,220/-by the AO as per the assessment order and Rs. 6,25,650/- disclosed in return of income by the assessee under regular provision of Act. As regards, the deletion of Rs. 18,70,576/- on account of addition of DEPB income by the AO, we are of the view that the ld. CIT(A) has wrongly deleted the same while deleting total addition of Rs. 44,68,220/- made on application of net profit

as the said income is shown by the assessee in its profit and loss account. However, the set off of the same is available to the assessee as given above by us from the estimated income as computed above by taking the gross profit at 6% estimate of gross profit rate. Therefore, we make it clear that the net taxable income after this order would be at Rs. 14,80,589/- as against returned income of Rs. 6,25,650/- as shown by the assessee. Accordingly, ground nos. 1 & 2 are treated as partly allowed.

(2) In the result, the appeal of the Revenue is partly allowed.

The order pronounced in the open court on 28.02.2017.

Sd/-

(सी.एम.गर्ग)

न्यायिक सदस्य

(C.M.GARG)

JUDICIAL MEMBER

Sd/-

(ओ.पी.मीना)

लेखा सदस्य

(O.P.MEENA)

ACCOUNTANT MEMBER

दिनांक /Dated : 28th February , 2017