

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'सी' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ C ” BENCH, AHMEDABAD

सर्वश्री एन.के. बिल्लैया, लेखा सदस्य एवं महावीर प्रसाद, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER And
SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

- i. आयकर अपील सं./I.T.A. No.1963/Ahd/2014 for A.Y.2010-11
ii. आयकर अपील सं./I.T.A. No.2274/Ahd/2014 for A.Y.2010-11

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| (i) M/s. Madhav Steels, Bhavnagar Rajkot Road, Nr. Backlite Factory, Bhavnagar-364240 | बनाम/ Vs. | The JCIT, Range – 2, Bhavnagar. |
| (ii) ACIT, Circle – 2, Bhavnagar. | | M/s. Madhav Steels, Bhavnagar Rajkot Road, Nr. Backlite Factory, Bhavnagar-364240 |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADFM 3387 M | | |
| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |

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| अपीलार्थी ओर से / Appellant by : | Shri Tushar P. Hemani, A.R. |
| प्रत्यर्थी की ओर से/Respondent by : | Shri Prasoon Kabra, Sr. D.R. |

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| सुनवाई की तारीख / Date of Hearing | 22/08/2017 |
| घोषणा की तारीख /Date of Pronouncement | 24/08/2017 |

आदेश / O R D E R

PER SHRI MAHAVIR PRASAD, JUDICIAL MEMBER :

These are two cross appeals by the assessee and the department against the order of the Commissioner of Income Tax(Appeals)-XX, Ahmedabad, dated 02/05/2014, in the matter of assessment under section 143(3) of the Income tax Act, 1961 ('the Act hereinafter'), for the Assessment Year (AY) 2010-11 identical, on the following Grounds:

- i. *The learned CIT(A) has erred both in law and on the facts of the case in confirming the action of learned AO in invoking the provisions of section 145(1) of the Act and thereby rejecting appellant's books of accounts.*
- ii. *The learned CIT(A) has erred both in law and on the facts of the case in confirming the lump sum addition of Rs.8,00,000/- made in respect of alleged unaccounted sales of machineries purely on the basis of estimation.*
- iii. *Both the lower authorities have passed the orders without properly appreciating the fact and that they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.*
- iv. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the ld. AO in levying interest u/s 234A/B/C of the Act.*
- v. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the learned AO in initiating penalty u/s.271(1)(c) of the Act.*

2. The relevant facts as culled out from the materials on record are as under:-

Assessee is engaged in ship breaking industry, whereby old and used vessels are discarded, generating mostly old & used plates, melting scrap etc.

Old & discarded ships are bought by the assessee for dismantling purpose. The ships are purchased on the weight basis, for which, the reference was made to the weight when it was manufactured and changes if any, made during its life cycle. Most of these records are maintained in the trim & stability book of the vessel. Though, the ships are purchased on weight basis, it is not possible to weigh the ship before or while taking the delivery. Hence, the ship is purchased assuming the weight mentioned in the Memorandum of Agreement as correct. After the ship is reached at the ship breaking plot, dismantling activity starts. The ship is dismantled as per the advice of the Mukadam. Large chunks of the ship are dismantled with the help of gas cutter. These large chunks are then pulled towards the plot with the help of winch. These chunks weigh anywhere between 50 Tons to 200 Tons. Later on, the large chunks are dismantled into small pieces, mostly plates, in sizes which can be accommodated into trucks for delivery. The size of the plots allotted by the Gujarat Maritime Board for ship breaking purpose are very small and hence, it is not possible to maintain large inventory in the plot. Mostly, the goods manufactured, are sold during the day.

2.2 Learned AO added Rs.40,00,000/- to total income of the appellant on the alleged ground that appellant had not accounted sales of Rs.20,00,000/- for two main engine, Rs.15,00,000/- for three DG sets and Rs.5,00,000/- for two sets of other type of machineries. As per the assessee the whole of addition is made on surmises, suspicion and conjectures. The learned AO estimated the figures of Diesel Generated sets, main engine and other machineries recoverable while dismantling in the ships purchased by the appellant. As per AR, further, guessed that these machineries were in very good condition and also guessed to the extent that they can fetch fantastic price. Learned AO rejected the books of account and made an addition of Rs.40,00,000/- on account of unaccounted sales of DG sets and two sets of other type of machineries.

3. Against the said order assessee preferred first statutory appeal before the learned CIT(A). Learned CIT(A) partly allowed with the action of AO but not with the quantum of addition. Hence, he estimated unaccounted sales and engines are sold after dismantling the ship. So far addition of Rs.8,00,000/- is concerned. Learned CIT(A) has made addition on the basis of exemption. In Our considered opinion, it cannot be allowed.

4. Learned AR has taken an alternative plea that only “profit element” embedded in alleged unaccounted sales can be added and alternatively,

impugned addition is in respect of “unaccounted sales”. It is a settled law that when “unaccounted sales” have been discovered, only “embedded profit element” added in assessee’s hands and that too based on “Net Profit”. Learned AR has relied on following judgment, as under:

- President Industries – 258 ITR 654 (Guj)
- CIT vs. Balchand Ajit Kumar – 263 ITR 610 (MP)
- Man Mohan Sadani vs. CIT – 304 ITR 52 (MP)
- Chetan C. Patel and others – IT(SS)A Nos.522-524/Ahd/2011

“Goss Profit” rate of the assessee is 4.07% and “Net Profit” rate is 1.65% and same is mentioned at Page No.2 of Asst. Order. Hence, impugned addition be restricted to Net Profit element embedded in such alleged unaccounted sales.

5. With the above observation, we allow the alternative plea taken by the assessee. Therefore we allow the appeal of the assessee.

6. Now we take up the Department’s appeal in ITA No.2274/Ahd/2014 for Asst. Year 2010-11, on the following Grounds:

The Ld. CIT(A)-XX, Ahmedabad has erred on facts and circumstances of the case in accepting lumpsum amount of Rs.8,00,000/- as unaccounted sales instead of Rs.40,00,000/- added by the AO u/s.143(3) of the Act, even when CIT(A) has himself accepted that assessee has not disclosed sale of such machineries and even when AO scientifically estimated the sale price of machineries referring to bills/invoices of other concerns.

7. In this case, disputed amount is Rs.32,00,000/- and tax rate for the year at 30% is only Rs.9,60,000/-, which is below the tax limit.

8. At the outset, the Id. Counsel for the assessee submitted that the appeal of the Revenue needs to be dismissed on account of low tax effect in view of the CBDT Circular No.21 of 2015 dated 10.12.2015. The Id. Departmental Representative fairly admitted that the tax effect is less than the limit prescribed by the aforesaid CBDT Circular.

9. We have heard both the parties and perused the material available on record. We find that *prima-facie* this appeal of the Revenue is not maintainable in view of CBDT Circular No. 21/2015 in F. No.279/Misc. 142/2007-ITJ (Pt) dated 10th December 2015, vide which it has been provided that if the tax effect by virtue of the Commissioner of Income-tax (Appeals)'s order is below Rs. 10 lacs, then that order would not be challenged before the Tribunal in further appeal. The Board has provided exemptions at clause (8) of the Instructions wherein it has been provided that these instructions will not be applicable, if vires of any provisions has been quashed by impugned order or addition was made on some audit objections or the addition relates to undisclosed foreign assets/bank accounts, etc. We find that the present case does not fall within the exemption clause and the tax is less than Rs.10 lacs. Therefore, the present appeal is not maintainable and hence dismissed.

ITA Nos. 1963 & 2274/Ahd/2014
Asst. Year –2010-11

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10. In the result, appeal filed by the assessee in ITA No.1963/Ahd/2014 for Asst Year 2010-11 is allowed and by the department in ITA No.2274/Ahd/2014 for Asst. Year 2010-11 is dismissed.

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| This Order pronounced in Open Court on | 24/08/2017 |
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Sd/-
एन.के. बिल्लैया
(लेखा सदस्य)
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
महावीर प्रसाद
(न्यायिक सदस्य)
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Ahmedabad; Dated 24/08/2017

Priti Yadav, Sr.PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-XX, Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad