

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH : KOLKATA

[Before Hon’ble Shri A.T.Varkey, JM & Shri M.Balaganesh, AM ]

I.T.A No. 290/Kol/2015

Assessment Year : 2011-12

Amit Jaiswal, Howrah  
[PAN : AHFPJ9026P]

-vs.-

ITO, Ward-47(3), Kolkata.

(Appellant)

(Respondent)

I.T.A No. 416/Kol/2015

Assessment Year : 2011-12

ITO, Ward-47(3), Kolkata

-vs.-

Amit Jaiswal, Howrah  
[PAN : AHFPJ9026P]

(Appellant)

(Respondent)

For the Appellant : Shri Miraj D. Shah, AR

For the Respondent : Shri Saurabh Kumar, Addl. CIT DR

Date of Hearing : 26.07.2017.

Date of Pronouncement : 02.08.2017

**ORDER**

**Per M.Balaganesh, AM**

1. These appeals by the assessee and Revenue arise out of the order of the Learned Commissioner of Income Tax (Appeals) -14 , Kolkata [ in short the ld CITA] in Appeal No65/CIT(A)-14/Wd-47(3)/2014-15 dated 05.02.2015 against the order passed by the ITO, Ward-47(3), Kolkata [ in short the ld AO] under section 143(3) of the Income Tax Act, 1961 (in short “the Act”) dated 31.03.2014 for the Assessment Year 2011-12.

2. Addition towards Purchase of Steel

The brief facts of this addition is that the assessee is engaged in the business of trading of Iron & Steel goods. The assessment year 2011-12 is the first year of operation of the

assessee. During the course of assessment proceedings, the assessee furnished party wise details of sales and purchases and the Ld. AO sought to verify the veracity of the purchase of steel made from M/s Rameswar Enterprise by issuing notice u/s 133(6) of the Act. The assessee produced various documents evidencing the fact of the purchase of goods by the assessee from M/s Rameswar Enterprise before the Ld. AO. The Ld. AO also issued summons u/s 131 of the Act to the said party. In response to the same the party appeared before the Ld. AO and disowned the transaction. Accordingly, the Ld. AO added back the entire purchase of steel from the said party amounting to Rs. 2,11,32,124/- as bogus purchases, to the total income of the assessee. The assessee pleaded before the Ld. CIT(A) that the details filed before the Ld. AO were completely ignored and the addition was made merely based on the statement given by M/s Rameswar Enterprise behind the back of the assessee. It was also submitted that the Ld. AO had accepted the sales disclosed by the assessee. It was stated that the sales were made after effecting the purchases from the party. It was stated that item wise stock registers were duly maintained by the assessee and purchases made from M/s Rameswar Enterprise were duly entered in the item wise stock register and thereafter it was sold to other parties. It was further submitted that the books of accounts of the assessee were duly audited u/s 44AB of the Act. It was also submitted that the party i.e. M/s Rameswar Enterprise appeared in person before the Ld. AO on 20.03.2014 and the assessment was completed on 31.03.2014 without affording any opportunity for cross-examination of the said party. It was also stated that in subsequent year the assessee had indeed made payment of Rs. 68 lacs to the said party by account payee cheques which has been encashed by the said party and this payment was purportedly made only against the supplies made by the said party to the assessee. Before the Ld. CIT(A) the assessee also filed comparable cases of three parties having similar turnover engaged in the same trade and situated in the same locality for the very same financial year 2010-11 relevant assessment year 2011-12. The details of the comparables given by the assessee are as under:

Name & Address of the Party	PAN	Turnover (Rs.)	G.P.(Rs)	N.P.(Rs)	G.P. Ratio	N.P. Ratio
Prem Chand Jaiswal & Brothers 182/3, Belilious Road, Howrah	ACXPJ4971E	7,87,64,932	13,25,043	2,75,571	1.68%	0.35%
Laxmi Steel Centre 177/9, Belilios Road, Howrah	AABFL6724H	6,26,47,146	20,04,181	4,60,535	3.20%	0.74%
Sanjay Steel Trading Co. 16, P.T.R. Siding, Shalimar, Howrah	AFBPM7978P	9,33,37,034	26,00,163	8,94,895	2.88%	0.96%

The Ld. CIT(A) also observed that in view of the certain inherent defects in the books of the assessee, it deserves to be rejected u/s 145(3) of the Act. However, he agreed with the contention of the assessee that no addition towards bogus purchases would be made when corresponding sales has been accepted by the Ld. AO. Accordingly, he resorted to estimate the gross profit of the assessee at 5% in respect of this transaction and directed the Ld. AO to add 5% of Rs. 2,11,32,124/- for making addition in that regard. Aggrieved, both assessee as well as Revenue are in appeal before us on the following grounds:

***Assessee's Appeal in I.T.A. No. 290/Kol/2015***

- 1. For that in any event and in the facts and circumstances of the case, the application of Gross Profit ratio 5% of total Turnover is on very higher side by the Ld. Commissioner of Income Tax (Appeals)-14, Kolkata and the same is liable to be substantially reduced at this forum.*
- 2. For that in the facts and circumstances of the case, the Ld. Commissioner of Income Tax (Appeals)-14 should have accepted the trading result of the appellant.*

***Revenue's Appeal in I.T.A. No. 416/Kol/2015***

- 1. The Ld. CIT(A)-14, Kolkata is erred in directing the AO to adopt 5% of the total sales as gross profit of the assessee instead of the addition of the entire amount of Rs. 2,11,32,124/- by the AO on account of bogus purchase.*

2. We have heard the rival submissions and perused the material available on record. It is not in dispute that the Ld. CIT(A) had rejected the books of accounts of the assessee due to certain inherent defects thereon u/s 145(3) of the Act. Then only logical recourse available to the Ld. CIT(A) is to make a fair estimation of gross profit on the main purchases of steel. The assessee had indeed furnished three comparables who are engaged in the same trade stationed in the same locality by giving the entire details of their PAN, Turnover, Gross Profit and Net profit together with their profit ratio as detailed supra. We find that the Ld. CIT(A) had completely ignored these comparable instances furnished by the assessee and resorted to estimate gross profit at 5% of purchase of Rs. 2,11,32,124/-, which in our considered opinion, is not warranted. When comparable instances are available together with PAN details, the Ld. CIT(A) ought to have considered the same and made a fair estimation of gross profit. In the instant case, we find that the gross profit of 3 comparable cases ranges from 1.68% to 3.20% of the turnover. Hence, we hold that adoption of gross profit at 3% of purchase value of Rs. 2,11,32,124/- would meet the ends of justice in the instant case. Accordingly, the Ld. AO is directed to make the addition of Rs. 6,33,964/- and delete the remaining sums thereon. Accordingly, the Ground nos. 1 and 2 raised by the assessee are partly allowed and ground no. 1 raised by the Revenue is dismissed.

4. Addition towards undisclosed turnover- Rs. 9,54,772/-

During the course of scrutiny proceedings, on perusal of Form 26AS, the Ld. AO observed that one party M/s Norinco Pvt. Ltd. had made contractual payment to the assessee amounting to Rs. 9,54,772/- after deduction of tax at source of Rs. 9,548/-. It was noticed by the Ld. AO that both the contractual payment of Rs. 9,54,772/- as well as TDS thereon amounting to Rs. 9,548/- were not disclosed by the assessee in the return of income filed for the assessment year 2011-12. The assessee when confronted by the Ld. AO to this effect, vide letter dated 17.12.2013 admitting the said mistake and agreed to offer a sum of Rs. 1,52,767/- representing the profit earned out of such

undisclosed turnover. In other words, after deduction of undisclosed expenses of Rs. 8,02,005/- from undisclosed turnover of Rs. 9,54,772/-, profit of Rs. 1,52,767/- was arrived which was offered to tax at the time of assessment proceedings. The Ld. AO for want of evidence of incurrence of expenses to the tune of Rs. 8,02,005/- proceeded to add the entire undisclosed contractual receipt of Rs. 9,54,772/- in the assessment and gave credit for TDS of Rs. 9,548/- in the assessment.

5. The Ld. CIT(A) applied the provisions of Section 44AD of the Act and found that the net profit disclosed by the assessee on this undisclosed transaction was Rs. 1,52,767/- which was much more than the net profit of 8% prescribed in Section 44AD of the Act and accordingly, directed the Ld. AO to adopt the net profit of Rs. 1,52,767 on this undisclosed contractual receipt transaction. Aggrieved, the Revenue is in appeal before us on the following ground:

*2. The Ld. CIT(A) is erred in directing the AO to adopt 8% of the undisclosed receipts of Rs. 9,54,772/- as income of the assessee instead of the entire amount of undisclosed receipts added by the AO.*

6. We have heard the rival submissions and perused the material available on record. We find that on one hand the assessee has undisclosed turnover receipt of Rs. 9,54,772/- and on the other hand has undisclosed expenses of Rs. 8,02,005/-. We find that the Ld. CIT(A) had rightly adopted net profit on this undisclosed transaction at Rs. 1,52,767/-. We do not find any infirmity in the order of the Ld. CIT(A) in this regard. Accordingly, Ground no. 2 raised by the Revenue is dismissed.

7. Addition towards gift from father-in-law: Rs 7,00,000/-

The brief facts of this issue is that the Ld. AO during the course of assessment proceedings observed that the assessee had introduced capital to the tune of Rs. 7,63,238/- during the year under appeal and was asked to explain the sources for the same. The assessee vide letter dated 29.10.2013 replied that a sum of Rs. 7 lacs was

received as gift from his father-in-law Shri Mahadev Jaiswal. The Ld. AO sought to verify the veracity of the same by calling for requisite information from Shri Mahadev Jaiswal, and the said letter was returned unserved. Accordingly, the Ld. AO sought to disbelieve the factum of receipt of gift by the assessee from his father-in-law as no iota of evidence was furnished proving identity, creditworthiness of the father-in-law and genuineness of the transaction. Accordingly, he sought to make an addition towards unexplained cash credit u/s 68 of the Act in the sum of Rs. 7 lacs. The action of the Ld. AO was confirmed by the Ld. CIT(A). Aggrieved, the assessee is in appeal before us on the following ground:

3. *For that the Ld. CIT(A)-14 should have accepted the grounds of appeal no. 6 raised through grounds of appeal regarding unlawful addition made u/s 68 for gift received from father-in-law.*

8. We have heard the rival submissions and perused the material available on record. The Ld. AR fairly prayed only for telescoping benefit of this addition with the additions ultimately in respect of two grounds aforesaid, namely i) addition towards gross profit on purchase of steel and ii) addition towards profit on undisclosed turnover. We find that this prayer of the Ld. AR is very fair as admittedly the assessee had only introduced cash to his capital account which was treated as a gift from his father-in-law, which ultimately was proved to be bogus for want of requisite evidences. Hence, the assessee is duty bound to explain source of introduction of cash to the tune of Rs. 7 lacs. Now we have already held that the sum of Rs. 6,33,964/- is to be added towards gross profit on purchase of steel from Rameswar Enterprise and further the sum of Rs. 1,52,767/- is to be added towards undisclosed profit from contractual receipts of M/s Norinco Pvt. Ltd. Naturally these sums are very much available as cash source to the assessee to explain the introduction of cash of Rs. 7 lacs into the capital account of the assessee. Hence, there is no harm in the Ld. AR seeking telescoping of both the additions. Accordingly, this prayer is accepted and the Ld. AO is directed not to make any separate addition towards unexplained cash credit in the sum of Rs. 7 lacs as the assessee is duly entitled

for telescoping the said sum with the other two additions (6,33,964 + 1,52,767) as contemplated above. Accordingly, ground no. 4 raised by the assessee is allowed.

9. During the course of hearing, the ground no. 3 raised by the assessee was informed by the Ld. AR as not pressed. Accordingly, ground no. 3 raised by the assessee is dismissed as not pressed.

10. In the result, the appeal of the assessee is partly allowed and the appeal of the revenue is dismissed.

**Order pronounced in the Court on 02.08.2017**

Sd/-  
[A.T.Varkey]  
Judicial Member

Sd/-  
[ M.Balaganesh ]  
Accountant Member

Dated : 02.08.2017

SB, Sr. PS

Copy of the order forwarded to:

1. Amit Jaiswal, 18/2/1, Bhagawan Chatterjee Lane, Kadamtala, Howrah-711101
2. ITO, Ward-47(3), Kolkata
- 3..C.I.T.(A)-14, Kolkata 4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary  
Head of Office/D.D.O., ITAT, Kolkata Benches