

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. 716 & 717/JP/2016
निर्धारण वर्ष/Assessment Year : 1998-99 & 2000-01

The ACIT, Circle-2, Alwar.	बनाम Vs.	M/s. Supreme Cylinders Pvt. Ltd., A-146, Industrial Area, Bhiwadi, Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN No. AACCS 9200 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./C.O. No. 31 & 32/JP/2016
(Arising out of ITA No. 716 & 717/JP/2016)
निर्धारण वर्ष/Assessment Years : 1998-99 & 2000-01.

M/s. Supreme Cylinders Pvt. Ltd., A-146, Industrial Area, Bhiwadi, Alwar.	बनाम Vs.	The ACIT, Circle-2, Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN No. AACCS 9200 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से/ Revenue by: Shri Rajendra Singh (JCIT)
निर्धारिती की ओर से/ Assessee by : Shri Himanshu Goyal (C.A)

सुनवाई की तारीख/ Date of Hearing : 13.09.2017.
घोषणा की तारीख/ Date of Pronouncement : 27/09/2017.

आदेश / ORDER

PER SHRI KUL BHARAT, JM.

These are two appeals by the by the revenue filed against two separate orders of Id. CIT (Appeals), Alwar dated 30.05.2016 pertaining to assessment years 1988-99 and 2000-01 whereas the assessee has filed the Cross Objections. Identical grounds are raised in these appeals, therefore, both the appeals are taken up together and are being disposed off by way of a consolidated order, for the sake of

convenience. First, we take up the appeal of the revenue in **ITA No. 716/JP/2016** pertaining to assessment year 1998-99. The revenue has raised the following grounds of appeal :

1. That the Id. CIT (A) has erred on the facts & circumstances of the case in deleting the addition made by the AO on account of inflation of purchases for Rs. 79,82,382/-.
2. That the Id. CIT (A) has erred on the facts & circumstances of the case in deleting the disallowance made by the AO on account of suppression of scrap sales for Rs. 60,70,056/-.
3. That the Id. CIT (A) has erred on the facts & circumstances of the case in deleting the disallowance made by the AO on account of bogus payment of commission for Rs. 1,23,879/-.

That the appellant craves leave to add, amend or alter the grounds of appeal on or before the date the appeal is finally heard for disposal.

2. Briefly stated the facts of the case are that the case of the assessee was re-opened after recording reasons and taking necessary approval from the competent authority by issuing notice under section 148 of the Income Tax Act, 1961 (hereinafter referred to as the Act) and assessment was completed under section 143(3) read with section 147/148 of the Act, 1961 vide order dated 29.05.2014. Originally the assessment was completed on 29.06.2000 under section 143(3) of the Act by determining the income at Rs. 2,16,15,282/- against the income returned by the assessee in the revised return at Rs. 2,14,86,391/-. While framing the assessment, the AO made the addition of Rs. 79,82,382/- on account of inflation of purchases, Rs. 60,70,056/- on account of suppression of scrap sale and Rs. 1,23,879/- on account of bogus payments of commission. Aggrieved by the order,

the assessee preferred an appeal before Id. CIT (A), who after considering the submissions of the assessee, partly allowed the appeal of the assessee. Now, the revenue is in appeal before this Tribunal.

3. Ground No. 1 of the revenue relates to deleting the addition made by the AO on account of inflation of purchases for Rs. 79,82,382/-.

3.1. The Id. D/R supported the order of the AO and submitted that the Id. CIT (A) was not justified in deleting the addition.

3.2. On the contrary, the Id. Counsel for the assessee reiterated the submissions as made in the written brief. The Id. Counsel for the assessee submitted that the assessee made purchases from M/s. Agarwal Brothers, Delhi, M/s. R.K. Steel Trading Co., and M/s. Saurabh Steel Syndicate, Delhi during the year under consideration. Copies of various bills along with relevant details were filed before the AO. The payment was made to the said party through account payee cheques. The assessee has been regularly making purchases from the said party. He submitted that the purchases from the said parties were doubted by the department and additions were made while passing the orders for various assessment years between 1999-2000 to 2004-05. In all these cases the assessee represented its case before Commissioner (Appeals)/ITAT which vide their orders have deleted the additions made by the assessing Officer. It was held that the appellant discharged its onus to prove the genuineness of its transaction and the department did not have any corroborative material in its hand to prove the assessee as guilty of having booked bogus purchases. Copies of these orders are enclosed in the paper book. Further, the Id. Counsel submitted that the AO himself has agreed that the transaction with the said party have been properly recorded in the books of accounts whereas the same is not

entered in material inward register and other personal records which are maintained by the assessee. In this respect, he submitted that these registers are personal records maintained for internal control purposes. Merely because a transaction was not entered in the same, cannot lead to a conclusion that the said transaction is sham. The knowledge and working capacity of staff is limited and mistakes are bound to happen. It is not the case that some unscrupulous activity has been done by the assessee. The assessee is manufacturing a highly regulated product which is monitored by various government entities. Its method of production and out is fixed. The yield of production in the year under consideration is similar to that in earlier and later years, and thus by no means it can be concluded that the assessee has inflated purchases.

In respect of the AO's making enquiries that the said concern has been found to be bogus, the assessee requested the AO to provide copy of the report received. But the AO failed to provide any details in this regard.

It is once again important to mention that the purchases from the said party have been duly accepted by the ITAT in its order, which is the last fact finding authority. ITAT having accepted the same it cannot be alleged that the said party is bogus.

The Id. Counsel submitted that similar submission as stated above have been made in the case of R.K. Steel Trading Corp. and Saurabh Steel Syndicate. He further wish to request that a similar issue arose in various other assessment years as under :-

Agarwal Brothers	-	purchases accepted by ITAT in order for A.Y.1999-2000
Saurabh Steels	-	purchases accepted by ITAT in order for A.Y. 2001-02

R.K. Steels - purchases accepted by ITAT in order for A.Y. 2001-02.

The Id. Counsel submitted that since purchases from all these parties have been considered as genuine by honourable ITAT, it is prayed that the submissions may kindly be accepted.

The Id. Counsel submitted that it is important to mention that the facts of the present case are truly identical to those of the year 1999-2000 and 2001-02 which have been decided by Honourable CIT (A) and ITAT in favour of the appellant.

The Id. Counsel, therefore prayed that the addition deleted by the Id. CIT (A) may please be confirmed.

3.3. We have heard rival contentions, perused the material available on record and gone through the orders of the lower authorities. We find that the Id. CIT (A) while deleting the addition, has discussed the matter in detail and in para 6.5 to 6.13 has observed as under :-

" 6.5. I have perused the assessment order as well as remand report of the AO, submissions made including judicial citations given therein and cross reply of the appellant and find that an addition of Rs. 79,82,382/- has been made by the AO on account of unexplained/inflated purchases. AO has stated in the order that purchase bills for purchases of HR sheet and LPG sheets from following parties were found to be not containing any stamp of sales tax check post, weighment slips, entries in the material inward register at factory gate and goods receipts register :-

*M/s. Aggarwal Brothers;
M/s. R.K. Steel Trading Corp;
M/s. Saurabh Steel Syndicate.*

6.6. The quantum of purchases made from these three parties during the period under consideration total upto Rs. 79,82,382. During

the course of survey operation u/s 133A of the IT Act at the business premises on 22.11.2004, these discrepancies were noted and a statement of the director of the company was also recorded in which he could not satisfactorily explain the reasons for the same. AO has accordingly held that all the purchases made from these three parties during the year under consideration are bogus and inflated.

6.7. The appellant has stated that issue of inflation of purchases from these parties alongwith certain other parties has already been considered in case of the appellant by the CIT (A) & Hon'ble ITAT for various years between 1999-2000 to 2005-06. It is submitted that Hon'ble ITAT has already accepted the purchases made from two parties as genuine purchases, while passing the order in the case of the appellant for AY 1999-2000 & 2001-02. A copy of the orders has been filed on record. It is submitted that in the case of M/s. Saurabh Steel Syndicate, purchases have been made in FY 1997-98 only and all the payments have been made through account payee cheques.

6.8. It is submitted that the employees of the assessee have categorically stated that they do not remember exactly and can confirm only after seeing the records whether purchases have been made from these parties or not. Further copy of ledger accounts of these parties will clearly reveal that payments have been made to these parties against purchases. In this respect, it is further submitted that during the course of proceedings for AY 2001-02 to 2004-05 representatives of these parties appeared before the AO and have confirmed the transactions. As regards the documentary lapses noted by AO that certain weighment slips, builties etc are missing these are matters of internal control and do not prove that the purchases made are bad. The documents do not form part of the books of accounts and thus non availability of the same, that too in few cases/few instances cannot conclude the purchases to be bogus.

6.9. *the appellant has submitted the details of Banks through which the payments have been made/encashed to/by these parties. The appellant has further requested the AO to issue the summons to these parties, if any further investigation from these parties is required. It is submitted that it did not have dealings with these parties since last 4-5 years and without purchases & consumption of material, it was not feasible for the company to produce the desired quantity of cylinders. It is submitted that copies of bills of Agarwal Bros. impounded with AO may kindly be seen and it would be found that each bill is supported with stores receipt cum Inspection report. Each bill has the stamp of gate entry with proper gate entry number and stamp of stores department with proper serial number of entry in GRR. Each voucher has been supported with the signature of person who verified the inspection report, storing in-charge, signature of person who has prepared Stores Receipt Cum Inspection Report. Each bill contains sales tax number and truck number, by which the goods were dispatched. There is no infirmity of any kind in these bills.*

6.10. *It is submitted that copies of purchase bills along with relevant details were filed before the AO. The payments for all the purchases made from these parties were made through account payee cheques. These facts have been confirmed by the AO in the order but addition has been made by following the orders passed in the later years. The purchases from the said party has been doubted by stating that though purchases have been recorded in books of accounts but the same are not found to be entered in material inward register and goods receipt register and the weighment slip is not attached. It is submitted that a similar issue arose in other assessment years :-*

Agarwal Brothers – Purchases accepted by ITAT in order for A.Y. 1999-00

M/s. R.K. Steel Trading Corp. Purchases accepted by ITAT in order for A.Y. 2001-02.

6.11. The appellant has stated that since purchases from all these parties have been considered as genuine by Hon'ble ITAT it is requested that addition made by the AO may be deleted. It is further stated that appellant is manufacturing a highly regulated product which is monitored by various government entities. The yield of production in the year under consideration is similar to that in earlier and later years, and thus by no means it can be concluded that the assessee has inflated purchases.

6.12. Having considered the detailed submissions made in this regard, I find that AO has in the remand report reiterated the reasons given in the assessment order and has not been able to bring on record any evidence to hold that purchases made from these parties are inflated & bogus. The fact that all the payments for the material purchased have been made through the banking channel against the receipt of bills, the yield in the production process, no. of cylinders manufactured, etc. have not been disputed by the AO. Further, I find that purchases made by the appellant from two parties namely – M/s. Agarwal Brothers and M/s. R.K. Steel Trading Corp. in the preceding year and succeeding year from these parties have been held to be genuine by the Hon'ble ITAT for AY 2001-02 vide order dated 09.09.2011 in ITA No. 9/JP/2011 & for AY 1999-2000 vide order dated 26.10.2007 in ITA No. 560/JP/2007 & ITA No. 513/JP/2007. However, as regards the purchases made from M/s. Saurabh Steel Syndicate are concerned, the same facts are prevailing in this case also as the payments were duly made through the bank account after receipt of bills and a copy of the ledger account showing all these details has been filed on record. Therefore, the contention of the appellant with regard to purchases of Rs. 30,85,511/- made from this party during the period under consideration, is found to be in order, in the absence of any material to the contrary available on record.

6.13. Thus, in view of the above discussion and in the absence of any material/evidence to the contrary available on record, I hold that there is no justification on the part of the AO to treat the purchases from these parties as inflated/not genuine. Accordingly, I delete the addition of Rs. 79,82,382/- made by the AO under this head."

After going through the above observations of the Id. CIT (A), we find no infirmity in the order of Id. CIT (A), who following the decisions of the Tribunal, had deleted the addition. The order of Id. CIT (A) is upheld. The ground of the revenue is rejected.

4. Ground Nos. 2 & 3 of the revenue relate to deletion of addition of Rs. 60,70,056/- on account of suppression of sale of scrap and of Rs. 1,23,879/- on account of commission expenses.

5. The Id. D/R supported the order of the Assessing Officer and submitted that the Id. CIT (A) was not justified in deletion the addition.

5.1. On the contrary, Id. Counsel for the assessee reiterated the submissions as made in the written brief. He supported the order of Id. CIT (A). He submitted that identical grounds have been adjudicated by the Coordinate Bench of the Tribunal in the assessee's own case in ITA No. 560/JP/2007 and ITA No. 513/JP/2007 pertaining to assessment year 1999-2000 in favour of the assessee. The Tribunal has also dealt with the similar issue in the order of the Tribunal for various other years. He, therefore, submitted that the order of Id. CIT (A) deleting the additions may be confirmed.

5.2. We have heard rival contentions, perused the material on record and gone through the orders of the authorities below. We find that the Id. CIT (A) had deleted the additions by observing in para 7.5 to 7.12 of his order as under :-

7.5. I have perused the assessment order as well as remand report of the AO, submissions made including judicial citations given therein and cross reply of the appellant and find that an addition of Rs.60,70,056/- has been made by the AO on account of suppression of sale of scrap. During the course of survey conducted on 22.11.2004 at the premises of the appellant, loose papers were found which revealed that scrap was being sold by the appellant @ Rs.5800 per MT as per the bills raised as against the market rate of Rs.10,700 per MT and excess cash was received out of the books. Following the same logic, AO has worked out 45% of concealment over the billed amount declared by the Appellant. AO has accordingly worked out the gross amount of scrap sales generated out of the books by extrapolating the figure shown in the books of accounts on account of scrap sale. AO has on the same basis worked out the excess cash received out of the books would be Rs.60,70,056 on account of scrap sales of 1238.787 MT during the year under consideration.

7.6. AO has also made an addition of Rs.123879 on account of commission payments on sale of scrap debited to the P&L A/c. This payment of commission was claimed by the appellant as having paid @ Rs.100 per MT to the broker. AO has held that all the scrap sale was made directly to the buyers and therefore disallowance of Rs.123879 on account of commission on scrap sale has been made.

7.7. The appellant has stated that certain papers pertaining to AY 2004-05 & 2005-06 on account of sale of scrap were found and the income stated therein was surrendered and offered for taxation. However, no such papers or other evidence pertaining to receipt of scrap value outside the books of accounts were found and also no evidence has been placed on record by the AO before making the addition. The addition made on this account is not justified as complete production records relating to receipt of raw material, number of

cylinders manufactured, generation of scrap, etc. Are under the supervision of Excise authorities.

7.8. It is further stated that AO was not justified in making an addition on this account after extrapolating the figures of scrap generation and AO has adopted the same rate of sale of scrap which has been used in AY 2004-05. Therefore, the addition made on this account may be deleted in the absence of any evidence. The appellant has placed reliance on a number of decisions of various courts to substantiate its arguments.

7.9. I have gone through the material available on record and find that addition has been made by the AO on the basis of extrapolation of the figures quantified on account of papers found pertaining to some other period during the course of survey operation at the premises of the appellant. The additions made by the AO on account of scrap sale were based on the papers found which pertain to AY 2004-05 & 2005-06. AO has not brought on record any other material or conducted any enquiry to establish the receipt of money out of the books on account of sale of scrap in this year.

7.10. Therefore, considering all these facts and in the absence of any evidence of scrap generation having been sold out of the books at higher rates, I hold that there is no justification on the part of the AO in making an addition on imaginative basis. Accordingly, I delete the addition of Rs.60,70,056 made by the AO under this head.

7.11. However, as regards the claim of commission paid on scrap sales @Rs.100 PMT is concerned, the appellant has in the course of appellate proceedings stated that allegation of bogus payment is based on presumptions. The complete details of payment made by cheques were filed before the AO. It is further stated that similar addition has been deleted by the Hon'ble ITAT in the other years.

7.12. Having considered the submissions made on this issue, I find that this issue has been considered by the Hon'ble ITAT in the case of the appellant for AY 1999-2000, wherein the disallowance made by the AO on this account was deleted by order dated 26.10.2007 in ITA No.560/JP/2007. Respectfully following the same, as there is no change in the facts in this year and AO has not brought on record any other adverse material on this issue, I delete the addition of Rs.1,23,879/- made by the AO on this account."

We find that the Id. CIT (A) after taking into consideration various aspects of the matter and also following the decision of the Tribunal in the assessee's own case for the assessment year 1999-2000, deleted the addition. We find no reason to interfere into the order of Id. CIT (A), the same is hereby affirmed. The grounds of the revenue are rejected.

6. Now, take up the appeal of the revenue in **ITA No. 717/JP/2016** pertaining to assessment year 2000-01. The revenue has raised the following grounds :

1. That the Id. CIT (A) has erred on the facts & circumstances of the case in deleting the addition made by the AO on account of inflation of purchases for Rs. 1,67,07,740/-.
2. That the Id. CIT (A) has erred on the facts & circumstances of the case in deleting the disallowance made by the AO on account of suppression of scrap sales for Rs. 1,12,58,527/-.

7. We have heard rival contentions, perused the material on record and gone through the orders of the authorities below. Both the parties have advanced the similar arguments as made for the assessment year 1998-99. We have adjudicated

the identical grounds in the appeal of the revenue in ITA No. 716/JP/2016 herein above. Since there is no change in the facts and circumstances for the assessment year under consideration, we affirm the order of Id. CIT (Appeals) who had rightly deleted the additions by following the decisions of the Tribunal in the assessee's own case for the A.Y. 1999-2000. The grounds of the revenue are rejected.

8. In the result, both the appeals of the revenue are dismissed.

9. Now, we take up the **cross objections No. 31 and 32/JP/2016** of the assessee. The assessee has challenged the order of the Id. CIT (A) in confirming the action of the AO in reopening of the assessment under section 148 of the Act.

10. We have heard the rival submissions and perused the material on record and gone through the orders of the authorities below. The Id. CIT (A) has confirmed the reopening of the assessment by observing in 4.5 to 4.10 of his order as under :-

" 4.5. I have perused the assessment order as well as remand report of the AO, submissions made including judicial citations given therein and cross reply of the appellant and find that AO has issued notice to the appellant before initiating re-assessment proceedings. Re-assessment proceedings were started after considering the objections raised by the appellant and on the basis of material available on record. I find that AO had issued the notice u/s 148 based on the material found during the course of survey and discrepancies noticed in the income declared by the appellant. The AO has given reasonable opportunity of being heard to the appellant before initiating the re-assessment proceedings. Hon'ble Supreme Court has laid down in the case of Kelvinator India 320 ITR 561 that AO has power to re-assess, only if there is a tangible material and the procedure laid down in the

case of G.K.N. Driveshaft has been followed by the AO. The AO has discharged the duty which lay upon him before initiating the reassessment proceedings.

4.6. *However, the case laws relied upon by the appellant does not have applicability to the facts of the present case. The function of the Assessing Officer is to administer the statute with solicitude for the public exchequer with an in-built idea of fairness to taxpayer (Asst. CIT v. Rajesh Jhaveri Stock Brokers (P) Ltd. (2007) 291 ITR 500 (SC). In determining whether commencement of reassessment proceedings is valid, the court has only to see whether there is prima facie some material on the basis of which the Department opened the case. The sufficiency or correctness of the material is not a thing to be considered at this stage as held by the Supreme Court in the case of Raymond Woollen Mills Ltd. v. ITO (1999) 236 ITR 34 (SC), Great Arts (P) Ltd. v. ITO (2002) 257 ITR 639 (Delhni). The assessee cannot challenge sufficiency of belief ITO v. Lakhmani Mewal Das (1976) 103 ITR 437 (SC).*

4.7. *It has been held by various courts that it is the duty of the assessee to disclose primary facts fully and truly. Reliance in this regard is placed upon the following :-*

- (a) Zohar Siraj Lokhandwala v. M.G. Kamat (1994) 210 ITR 956 (Bom) "Assessee primarily must disclose particular portions of documents which are material."*
- (f) Parashuram Pottery Works Co. Ltd. v. ITO (1977) 106 ITR 1 (SC)*
- (g) Indian Oil Corporation v. ITO (1986) 159 ITR 956 (SC)*
- (h) Calcutta Discount Co. Ltd. v. ITO (1961) 41 ITR 191 (SC)*
- (i) ITO v. Lakhmani Mewal Das (1976) 103 ITR 437 (SC)*

4.8. *In the above quoted cases, mainly it was held that the assessee must disclose all primary facts fully and truly. The words 'omission or failure to disclose fully and truly all material facts necessary for his assessment for the year, postulate a duty on every assessee to*

disclose fully and truly all material facts necessary for his assessment. What facts are material and necessary for assessment will differ from case to case. There can be no doubt that the duty of disclosing all the primary facts relevant to the decision or the question before the assessing authority, lies on the assessee.

4.9. Further in the case of A G Group Corporation vs. Harsh Prakash – 353 ITR 158 Hon'ble Gujarat High Court has upheld the issue of notice u/s 148 as there was alleged suppression of stock on the part of the assessee. Also in the case of Aquagel Chemicals P. Ltd. vs. ACIT – 353 ITR 0131, Hon'ble Gujarat High Court has upheld the initiation of reassessment proceedings on the ground of failure on the part of assessee to disclose facts necessary for assessment.

4.10. Thus, in view of these facts, I hold that AO had rightly initiated the proceedings u/s 147/148 of the IT Act."

In view of the above finding of Id. CIT (A), we do not find any reason to interfere into the order of Id. CIT (A) in respect of this ground, the same is hereby upheld, as the Id. Counsel for the assessee could not point out any illegality into the re-opening of assessment by furnishing any contrary material on record. The ground of the assessee is rejected.

11. In the result, the cross objections of the assessee are dismissed.

12. In totality, appeals of the revenue as well as cross objections of the assessee are dismissed.

Order is pronounced in the open court on 27.09.2017.

Sd/-
(भागचन्द)
(BHAGCHAND)

लेखा सदस्य/Accountant Member
Jaipur
Dated:- 27/09/2017.
Das/

Sd/-
(कुल भारत)
(KUL BHARAT)

न्यायिक सदस्य/Judicial Member

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

1. The Appellant- The ACIT, Circle-2, Alwar.
2. The Respondent – M/s. Supreme Cylinders P. Ltd., Alwar.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 716 & 717/JP/2016 & CO 31 & 32/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

