

आयकर अपीलीय अधिकरण, ' बी ' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, CHENNAI**

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./ I.T.A. No. 2935/Mds/2016

निर्धारण वर्ष/Assessment Year : 2012-13

Deputy Commissioner of Income Tax,
Corporate Circle -4(1),
Chennai.

M/s. Metal & Scrap Traders Pvt. Ltd.,
Vs. No. A-4, SIDCO Industrial Estate,
Kodungaiyur,
Chennai – 600 118.

[PAN: AACCM 0313K]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri P. Radhakrishnan, JCIT

प्रत्यर्थी की ओर से/Respondent by

: Shri V. Ravi Chandran, CA

सुनवाई की तारीख/Date of Hearing

: 27.06.2017

घोषणा की तारीख/Date of Pronouncement

: 11.07.2017

आदेश / O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

This is an appeal filed by the Revenue against the order of the Commissioner of Income Tax (Appeals)-8, Chennai in ITA No. 28/2015-16 dated 11.08.2016.

2. Metal & Scrap Traders Pvt. Ltd, the assessee, is carrying on the business of trading in all kinds of Ferrous Scrap. In the assessment made for the assessment year 2012-13, the Assessing Officer found that certain expenditure viz., repairs and maintenance, freight inward, discount and other expenses were very high when compared with sales admitted during the year vis-a-vis the earlier years. Considering the business , nature of expenses and the increase in turnover, he disallowed 50% of such expenses at Rs. 32.07 lakhs. Aggrieved, the assessee filed an appeal before the CIT (A)-8, Chennai. The CIT(A) held the addition to the admitted income cannot be made on estimate basis, based on assumptions and presumptions especially in a case where regular books of accounts have been maintained, which were audited in accordance with law. The Assessing Officer's view that the expenditure incurred should be in proportion to the sales turnover has no basis in the absence of requisite evidence and hence, the CIT (A) did not sustain the disallowance made by the AO.

3. Aggrieved, the Revenue filed this appeal with the following grounds:

"2.1 The CIT(A) erred in not appreciating the findings of the AO that as compared with the expenditure claimed in the preceding assessment year, the expenses with regard to Repairs & Maintenance, Freight Inward, Discount and other expenses are on the higher side and therefore 50% of the expenses claimed were disallowed by the AO.

2.2 The CIT(A) failed to take note that it is settled law that entry or absence thereof in books of account is not conclusive either for

treating the amount as income or allowability or otherwise of the expenditure. Thus, only on the basis of entry in the books of account the claim of expenditure is not allowable and hence the CIT(A) erred in holding that additions to admitted income cannot be made on estimate basis based on assumptions especially in a case where regular books of account have been maintained.

2.3 Having regard to the decision of Jurisdictional High Court in the case of Empee Distilleries Ltd Vs. ACIT (2010) 324 ITR 82 (Mad) wherein disallowance @10% on the excess claim on purchase price has been upheld, the CIT(A) ought to have upheld the impugned disallowance on the claim on expenses made by the AO."

4. The DR presented the case on the lines of the Assessing Officer and on the grounds of the appeal. Per contra, the AR submitted a ratio analysis of on certain aspects , the relevant portion is extracted as under:

	AY 2011-12	AY 2012-13
Sales	1,056,623,207	1,435,684,652
Gross Profit%	8.73%	9.14%
Net profit %	0.95%	1.13%
Other Expenses %	5.12%	4.61%

and submitted that during the assessment year, the GP has increased, the net profit has increased. However, other expenses has fallen from 5.12% to 4.61%. In spite of it, the AO picked up certain items which are grouped under other expenses and disallowed. The AR further sought our attention to Para 2 of the Assessment Order which is extracted as under:

"2. In response to the notice issued, the assessee's authorized representative Shri. Raja Ram More, FCA appeared and produced reply to the questionnaire the details of AIR, books of account, reply to questionnaire, Return of income for AY 2012-13 and 2011-12, financials, Annual Auditor and Tax Audit Reports, Creditors & Debtors details, Copy of Directors Returns, TDS deducted and paid challans, 26AS, Invoice bills for addition to fixed assets, 43B payments, secured and unsecured loan creditors confirmation, security charges, statutory payables, immovable properties details with copy of purchase deed, TDS chart for TDS deducted, details of closing stock, BRS and other necessary details that were called for on various dates and the same were perused. The assessee's Authorized representative was heard from time to time."

and submitted that the Assessing Officer having verified each and every item mentioned above could not find any fault with any of them. However, he has chosen to cherry-pick the impugned items and disallowed them arbitrarily on assumptions and presumptions. Thereafter, he supported the decision of the CIT (A).

5. We heard the rival contentions and find merits in the submissions of the AR. The Assessing Officer having examined each and every item mentioned in his order, cannot disallow certain items merely on suspicion as pointed out by the AR, that too when the GP and NP has gone up and other expenses has gone down. Therefore, the disallowance made by the Assessing Officer cannot be sustained. The C's IT(A) observation that the Assessing Officer's view that the expenditure incurred should be in proportion to the sales

turnover has no basis in the absence of requisite evidence is justified and hence, the order of the CIT (A) does not require any interference. The Revenue's appeal is dismissed.

6. In the result, the Revenue's appeal is dismissed.

Order pronounced on Tuesday, the 11th day of July, 2017 at Chennai.

Sd/- (एन.आर.एस. गणेशन) (N.R.S. GANESAN) न्यायिक सदस्य/Judicial Member	Sd/- (एस जयरामन) (S. JAYARAMAN) लेखा सदस्य/Accountant Member
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चेन्नई/Chennai,

दिनांक/Dated: 11th July, 2017

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |