

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER

	I.T.A. No.496 TO 498/DEL/2016	
	A.YRS. : 2004-05 TO 2006-07	
ACIT, SONEPAT CIRCLE, SONEPAT	VS.	HARYANA STEEL & ALLOYS LTD., GT ROAD, MURTHAL, SONEPAT (PAN: AAACH4481R)
(ASSESSEE)		(RESPONDENT)

Revenue by : Sh. Arun Kumar Yadav, Sr. DR
Assessee by : None

ORDER

PER H.S. SIDHU : JM

The Revenue has filed these Appeals against the common impugned Order dated 30.11.2015 of the Ld. CIT(A), Rohtak relevant to assessment years 2004-05 to 2006-07. Since the issues involved in these appeals are common and identical, except the difference in figure, hence, the same were heard together and are being disposed of by this common order for the sake of convenience, by dealing with ITA No. 496/Del/2016 (AY 2004-05).

2. The following are the common grounds:-

"1. *The CIT(A) has erred in law and facts in deleting the addition of Rs. 2,34,58,802/- for the AY 2004-05 without any verification and reason for accepting the plea taken by the assessee. The above said addition was made on the basis of show cause notice issued by Central Excise Department alleging removal of goods without payment of duty under the cover of trading invoices of various dummy, non-existent parties. G.P. rate of 5.77% has rightly been applied being the peak rate shown by the assessee.*

2. *That the appellant craves for permission to add, delete or amend the ground of appeal before or at the time of hearing of appeal.*

3. The brief facts of the case are that Return of income in this case was filed on 29-09-2004 declaring Nil Income after adjustment of B/F loss of Rs. 26,53,333/-, which was processed under section 143(1) of the I.T. Act on 10.5.2005. Notice u/s 148 of the I.T. Act was issued to the assessee on 29.03.2011 after recording reasons within the meaning of section 147 of the I.T. Act on the basis of the

information received from Central Economics Intelligence Bureau, Delhi. The notice was duly served upon the assessee on 30.03.2011. In response to this notice letter dated 03.05.2011 and 23.5.2011 were received in this office seeking adjournment of the case and the case was adjourned accordingly. Further on 13.06.2011, the Authorized Representative attended and requested for supplying of the reasons recorded u/s 147 of the I.T. Act. The copy of reasons recorded was provided to the AR of the assessee. The AR of the assessee stated that return filed originally be treated as return filed in response to notice u/s 148 of the I.T. Act. Notices under section 143(2) and 142(1) of the Income Act, 1961 were issued and served upon the assessee within the stipulated time, in response to which the AR of the assessee attended the proceedings and submitted the requisite details/information/ documents from time to time. During the assessment proceedings the assessee informed that the winding up order of the company had been passed and stay application had also been dismissed by the Court. During the assessment proceedings, the assessee filed a copy of the Show Cause Notice issued by the Central Excise Department alleging removal of goods without payment of duty under the cover of trading invoices of various dummy / non-existent parties as per Annexure-H of the show cause notice and the same was accepted by the Custom and

Central Excise Settlement Commission in its order. After that assessee filed a Civil Writ Petition No. 11052 of 2009 with the Hon'ble Delhi High Court which is still pending for decision against the order of the Settlement Commission. The assessee company is engaged in manufacturing and trading of stainless steel and other alloy steel, billets rolled products etc. and has shown the GP rate @4.57 for year ending 2002; @0.76 year ending 2003; @5.77 for year ending 2004 and @5.35 for year ending 2005. Therefore, the AO GP rate of @5.77% being the highest rate, has been applied to the assessee on total unaccounted sales and accordingly, addition of Rs. 2,34,58,802/- has been made to the declared income of the assessee vide order dated 22.12.2011 passed u/s. 143(3)/147 of the I.T. Act, 1961. Against the aforesaid assessment order, assessee appealed before the Ld. CIT(A), Rohtak, who vide his common impugned order dated 30.11.2015 has partly allowed the appeal of the assessee. Aggrieved with the order of the Ld. CIT(A), the Revenue is in appeal before the Tribunal.

4. Ld. DR relied upon the Order of the AO and reiterated the contentions raised in the grounds of appeal.

5. In this case, Notice of hearing to the assessee was sent by the Registered AD post, in spite of the same, assessee, nor its authorized representative

appeared to prosecute the matter in dispute, nor filed any application for adjournment. However, the notice was received back with the remarks "This factory has been closed" and no new address has been furnished by the assessee. Keeping in view the facts and circumstances of the present case and the issue involved in the present Appeal, we are of the view that no useful purpose would be served to issue notice again and again to the assessee, therefore, we are deciding the present appeal *ex parte qua* assessee, after hearing the Ld. DR and perusing the records.

6. We have heard the Ld. DR and perused the relevant records, especially the impugned order. We find that AO has failed in appreciating that the assessee is incurring regular losses year after year e.g. in AY 2003-04 & 2005-06, 2006-07 where there are net losses where in AY 2004-05, the net profit is marginal being 0.01%. So without considering assessee's past history and subsequent history and applying GP rate straightway to turnover to compute extra profits is purely an adhoc and hypothetical exercise against the economic conditions of assessee's business. We further find that no independent enquiry and corroboration made by the AO in respect of the findings of the Excise authorities. Taking a holistic view of the entire conspectus of the matter, we are of the opinion that the AO has erred in making adhoc and arbitrary additions to

the assessee's trading results, which was rightly deleted by the Ld. CIT(A), which does not need any interference on our part, hence, we uphold the action of the Ld. CIT(A) and reject the ground raised by the Revenue.

6.1 Following the consistent view as taken by us in Assessment Year 2004-05, as aforesaid, the identical grounds raised by the Revenue in respect of assessment years 2005-06 & 2006-07 are also rejected.

7. In the result, all the 03 Appeals filed by the Department stand dismissed.

Order pronounced in the Open Court on 14/11/2017.

Sd/-

[L.P. SAHU]
ACCOUNTANT MEMBER

Date 14/11/2017

SRBHATNAGAR

Copy forwarded to: -

1. Assessee -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

Sd/-

[H.S. SIDHU]
JUDICIAL MEMBER

By Order,

Assistant Registrar, ITAT, Delhi Benches

