

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, CHENNAI

श्री चंद्र पूजारी, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी,
न्यायिक सदस्य के समक्ष

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 1889/Mds/2015

निर्धारण वर्ष /Assessment Year : 2009-10

The Income-tax Officer,
Non-Corporate Ward-4(3),
Chennai – 600 006.
(अपीलार्थी/Appellant)

v. **Shri S. Devinder Singh,**
T-22, Horizone Apartment,
No.1030, T.H.Road, Kaladipet,
Chennai – 600 019.
PAN AAIPS2043R
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर /Appellant by : Shri K. Ravi, JCIT

प्रत्यर्थी की ओर से/Respondent by : Shri T. Banusekar, FCA

सुनवाई की तारीख/Date of Hearing : 07.06.2017

घोषणा की तारीख/Date of Pronouncement: 24.08.2017

आदेश / O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER

This appeal filed by the Revenue is directed against the order of the Commissioner of Income-tax (Appeals) dated 2.6.2015 for the assessment year 2009-10.

2. The Revenue has raised the following grounds in its appeal for adjudication.

“2.1 The learned CIT(A) erred in deleting the disallowance of ₹ 24,07,726/- on account of discrepancies found in sundry debtors outstanding balances.

3. The learned CIT(A) erred in deleting the disallowance of ₹ 95,43,566/- on account of discrepancies found in sundry creditors outstanding balances.

4. Ld. CIT(A) erred in deleting 50% of unexplained expenditure in purchase of timber of ₹ 5,79,365/- when during the course of assessment, the party has clearly confirmed that it had no transaction with assessee.”

3. The brief facts of the case are that the assessee is an individual doing manufacture and sale of CTD Bars, M.S. rounds, TMT Bars, M.S. scraps etc., in the name and style of M/s. Dev Industries. For the assessment year 2009-10, the assessee filed the return of income on 29.9.2009 declaring a total income of ₹9,43,069/-. The return was processed u/s.143(1) of the Act. The case was selected for scrutiny under CASS and notice u/s.143(2) of the Act was issued accordingly. The assessment was completed u/s.143(3) of the Act on 30.12.2011 determining the total income at ₹ 2,12,41,336/- and the AO made certain additions to the returned income. Aggrieved with

the order of Assessing Officer , the assessee went in appeal before the CIT(Appeals).

3.1 On appeal, the CIT(Appeals) considered the report filed by the AO on 10.01.2014 stating that

(i) The additions of ₹ 54,39,493/-, which are disputed in the appeal, may be deleted and he urged to confirm additions of ₹ 1,34,33,630/- made in the assessment order.

(ii) Out of the addition of ₹2,02,98,267/- made in the assessment order, a sum of ₹ 54,39,493/- is directed to be deleted, which was agreed to by the AO in his report.

4. According to the CIT(Appeals), in the case of **M/s. Steel & Tube Field India (P) Ltd.**, a sum of ₹15,04,204/- being the difference between the assessee's books and the party's books was added. Further, the CIT(Appeals) observed that the AO was of the opinion that the difference of ₹ 15,04,204/- was understated by the assessee and the assessee did not reconcile the discrepancy in the opening balance with evidence.

4.1 The CIT(Appeals) observed that the assessee nowhere furnished explanation as to how the difference arose between the assessee's accounts and the party's accounts. Even before the CIT(Appeals), the assessee has not filed any credible evidence to show that there is no difference. However, the CIT(Appeals) observed that the difference does not relate to the assessment year under appeal and not attempt was made to find out as to how the difference arose. According to the CIT(Appeals), when an addition is made, it is for the AO to prove that the particular sum is to be taxed. In the absence of proper reasoning and corroborate evidence, according to the CIT(Appeals), addition cannot be sustained and in the remand report the AO has not made any attempt to disprove the assessee's version of brought forward balance. Therefore, according to the CIT(Appeals), the addition is not warranted, as the AO did not prove to which year the impugned addition related to. Accordingly, he directed the AO to delete the addition. Against the order of Ld.CIT(A), now the Revenue/Assessee is in appeal before us.

4.2 With regard to deleting the addition of ₹15,04,204/- being the difference between the assessee's books and **M/s. Steel & Tube Field India (P) Ltd.**, the Id.D.R submitted that during the course of assessment proceedings, the AO had obtained copy of that party's cash book, which clearly disclosed the differences in assessee's books and the Ld.CIT(A) failed to consider this evidences obtained by the AO and solely relied on the argument of the Id.A.R and deleted the addition. On the other hand, Id.A.R submitted that the difference was not relating to the assessment year under consideration, as such it was deleted by the Ld.CIT(A).

4.3 We have heard both the parties and perused the material on record. In our opinion, the AO found the difference between the assessee's books of accounts and the party's account and made an addition. If there is a difference, it is the duty of the assessee to reconcile and explain before the lower authorities. Before the Ld.CIT(A), the assessee submitted that the difference is not relating the assessment year under consideration. However, there is no whisper with regard to the year to which the

difference relates. Hence, it is to be brought on record by the Ld.CIT(A) and it has to be specified by the Ld.CIT(A) regarding the exact differences relating to the year to which it relates. Accordingly, we remit this issue to the file of Ld.CIT(A) for fresh consideration.

5. In the case of **M/s. Sai Steel Syndicate**, a sum of ₹4,92,046/- was added to the income returned being the difference between the assessee's books. In the assessment order, it was stated that this is accepted by the AR vide his reply dated 28.11.2011. In the remand report, the AO accepted ₹2,82,046/- as explained and the balance of ₹ 2,10,000/- was treated as unproved. In the report dated 10.01.2014, it was stated that the party has not accounted for the opening debit balance of ₹ 1,10,000/- and cash payments of ₹ 1,00,000/- on various dates. The AO was of the view that it is beyond comprehension why the assessee made payments of ₹1,00,000/- in cash on various dates when the party's account shows a debit balance of ₹ 1,10,000/- at the beginning of the year as per assessee's own books. Hence, the AO requested to

confirm the addition to the extent of ₹ 2,10,000/-. In the reply dated 03.03.2014, the assessee stated that its proprietary business M/s. Arjan Dev Ispat was formerly known as Dev Industries. The other party maintained two accounts of the assessee simultaneously viz. M/s. Arjan Dev Ispat Udyog and M/s. Devi Industries and hence the difference. It was stated that a sum of ₹ 2,00,000/- was transferred to Dev Industries in the ledger account of the assessee by Sai Steel Syndicate. Account copy of the party M/s. Sai Steel Syndicate showing assessee's account was furnished. This leaves only ₹ 10,000/- to be explained. The contention that the cash payment of ₹ 10,000/- was wrongly accounted in M/s. Sai Steel Syndicate instead of M/s. Sai Steel Enterprise is not acceptable. Hence, the addition to the extent of ₹ 2,00,000/- is deleted and ₹ 10,000/- is confirmed. Against the order of Ld.CIT(A), now the Revenue is in appeal before us.

5.1 We have heard both the parties and perused the material on record. Admittedly, the Ld.CIT(A) had given a relief on the reason that the difference is on account of mixing up of names.

Before us, Id.D.R submitted that it was only after-thought explanation given by the assessee. In our opinion, Ld.CIT(A) has to give findings how the mixing up of entries was happened and what is the impact on the financial statement of assessee. If there is a revenue effect and it is to be brought to tax. Accordingly, we remit this issue to the file of Ld.CIT(A) for fresh consideration.

6. In the case of **M/s. Indoria Industries**, the sum of ₹4,11,476/- being the closing balance difference (as on 31.03.2009) between the assessee's accounts and party's accounts represented unaccounted purchase by the assessee and hence added by the AO. In the remand report, the AO stated that the difference was not explained to him even at the time of remand proceedings and hence urged that the addition is to be confirmed. It is seen that there is a credit balance of ₹4,11,476/- in the name of M/s. Iron steel, import scrap and plastic scrape account in the assessee's books. Xerox copy of Indoria Industries Bill No.190 dated 8.1.2009 reveals that the party sold M.S. scrap to the assessee for ₹ 4,11,476/-. In the bill

under the name Indoria Industries, it was written as dealers in Iron steel, import scrap and plastic scrap. According to Ld.CIT(A), this was wrongly taken as the name of the party and shown as separate account in the assessee's books and the same is separately shown in the audited balance sheet as on 31.3.2008. Hence, the CIT(Appeals) observed that both the accounts are same and there is no difference for making the addition and directed the AO to delete the addition of ₹ 2,11,476/-. Against the order of Ld.CIT(A), now the Revenue is in appeal before us.

6.1 We have heard both the parties and perused the material on record. In the case of **M/s. Indoria Industries** also, the assessee has given a reply that it is on account of mixing up of bills while accounting. As discussed in earlier para No.5.1, if it is actually mixing up and it is having revenue effect to be considered as income of the assessee, and to be brought to tax. Accordingly, this issue is remitted to the file of Ld.CIT(A) for fresh consideration. Further, we make it clear that in all these above

three issues, the Ld.CIT(A) has to call for Remand report from the Id. Assessing Officer.

7. The next ground is with regard to deletion of a sum of ₹ 6,41,488/- was added as unexplained investment as **M/s. Bajoria Steels** had shown nil balance against the assessee's name. In the remand report, the AO did not accept the explanation of the assessee who stated that the difference was only in the opening balance. The AO was also of the view that the excess credit balance of ₹ 6,41,488/-, which is not due to the creditor is to be treated as income of the assessee. In response, the assessee stated in its reply dated 03.03.2014 that the party did not account the sale made to the assessee and the assessee also stated that the receipts of ₹2,00,000/- on 17.12.2005 and ₹ 2,00,000/- on 18.2.2006 have been wrongly accounted in the name of M/s. Sri Vinayaka Ispat Udyog. The copy of the parties ledger and the reconciliation statement were produced for reference. It seems acceptable as seen from the statement of accounts for the AY 2005-06 of the assessee and the party. Hence, the assessing Officer is directed to delete the addition made.

7.1 We have heard both the parties and perused the material on record. Admittedly, this addition was deleted by the Ld.CIT(A) on account of wrong entry and also on account of certain entry not relating to the assessment year under consideration. Herein also, we remit this issue to the file of Ld.CIT(A) to decide afresh by pointing out the year to which these entries relate and its impact on assessee.

8. The next issue is with regard to deletion of a sum of ₹89,02,078/- standing in the name of **M/s. Quality Steels** was added as unexplained credit because the letter sent to that party returned unserved by the postal authorities with the remark “no such addressee”. During the remand proceedings, the assessee stated that the creditor wound up the business because of loss and shifted to Hyderabad. It was further stated that there are only purchases made from that party. It was further stated that there are only purchases made from that party and no payments were made to M/s. Quality Steels and the amounts are outstanding even as on 31.3.2009. But the AO held that the credit is not proved as a

genuine one and added the sum to the returned income. The assessee in response stated that the assessee is also incurring losses and business was closed as factory, land and building were taken by the bank under 'SARFAESI' Act. Hence, he could not repay the creditors. Perusal of account copy of M/s. Quality Steels in the books of the assessee during the period 01.07.2005 to 30.3.2006 reveals that only purchases were made throughout the year and the balance outstanding was ₹ 90,57,236/- as on 31.3.2006. ₹ 2,50,000/- paid on 2.9.2006 and ₹ 2,50,000/- on 7.9.2006 were the only payments made by the assessee to M/s. Quality Steels. The return of letter sent to the creditor cannot be conclusive proof for treating it as bogus creditor, it was contended. The assessee also produced sales-tax order to prove that the assessee made a turnover to such an extent to cover the purchase from Quality Steels. The assessee has to pay a huge sum to M/s. Quality Steels and the amounts are still outstanding. The AO did not prove that the purchase was bogus. The sale bills issued by M/s. Quality Steels were

produced before the CIT(A) as well as before the AO. No attempt was made by the AO to prove that the party is fictitious concern. The AO did not make any calculation to disprove that the quantity of M.S. scrap purchased did not tally with the sales of the assessee. Non-payment alone cannot be a sole criterion to say that the purchase is bogus. The assessee also admitted that it is in a financial difficulty. In view of the above discussion the CIT(Appeals) observed that the purchase cannot be treated as bogus. He directed the AO to delete the addition made. . Against the order of Ld.CIT(A), now the Revenue is in appeal before us.

9. We have heard both the parties and perused the material on record. The Id.A.R relied on the judgement of Karnataka High Court in the case of CIT Vs.Alvares & Thomas reported in (2016) 95 CCH 0213(Kar.HC) for the proposition that “merely because creditor cannot be traced on date when verification is made, same is not ground to conclude that there is cessation of liability. In our opinion, the ratio laid down by the Hon’ble Karnataka High Court cannot be applied to the facts of the present case. Whenever the assessee had shown any creditors in its books of

accounts, it should be explained to the satisfaction of the AO u/s.68 of the Act. In the present case, the assessee has failed to satisfy the AO regarding the genuineness of the transactions and credit worthiness of the parties, who were not traceable. The Ld.CIT(A) deleted the addition on the reason that the AO has not proved the purchase was bogus. In our opinion, Ld.CIT(A) decided the issue without making necessary inquiry with the parties. The AO's conclusion is based on enquiry made by him during assessment stages and the Ld.CIT(A) without bringing any material on record to contrary to the findings of AO in deleting is not proper. Accordingly, we reverse the order of Ld.CIT(A) and restore the order of Id. Assessing Officer. This ground of appeal by the Revenue is allowed.

10. The last ground of appeal is with regard to unexplained expenditure of ₹ 5,79,365/- is concerned, the facts are that the assessee claimed purchase of timber for ₹5,79,365/- from M/s. S.S.Timber Traders, Chennai, who stated that there was no transaction with the assessee during the AY 2009-10. When questioned about it, the assessee produced only quotation/estimate. No bills/invoices were produced before the

AO for verification. In the absence of proof, the sum was added as unexplained expenditure. The assessee, in his reply dated 3.3.2014 stated that the timber was purchased from M/s. S.S.Timber Traders and the work was entrusted to a carpenter who does the purchase of timber and wood for the doors and windows of the house. The assessee also stated that it was mentioned as "estimate / memo" in the alleged bills produced by the assessee. The assessee also claimed that it is usual practice that most of the hardware and timbers shops give only memo bills instead of proper bills. The CIT(Appeals) observed that there was no denial by the AO that the house was not constructed and there will be definitely purchase of wood and carpenter charges etc. According to the CIT(Appeals), it is also usual practice for the Timber Traders to issue estimates in the place of bills. Therefore, the CIT(Appeals) observed that 50% of disallowance will meet the ends of justice. Accordingly, the CIT(Appeals) confirmed the addition of ₹ 2,89,683/- and deleted balance addition of ₹ 2,86,682/-. Against the order of Ld.CIT(A), now the Revenue/Assessee is in appeal before us.

10.1 We have heard both the parties and perused the material on record. Admittedly, these payments are not supported by the proper voucher and accordingly, whenever the assessee claimed any expenditure, it has to be proved that it was wholly and exclusively incurred for the purpose of business of the assessee. In the present case there is no iota of the evidences regarding the expenditure incurred for the purpose of business. Hence, disallowance is warranted and cannot be adhoc disallowance of 50% of expenditure incurred. Accordingly, we reverse the order of Ld.CIT(A) and restore the order of Id. Assessing Officer. This ground of appeal by the Revenue is allowed.

11. In the result, the appeal of Revenue is partly allowed for statistical purposes.

Order pronounced on 24th August, 2017 at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(Duvvuru RL Reddy)

न्यायिक सदस्य/Judicial Member

Sd/-

(चंद्र पूजारी)

(Chandra Poojari)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 24th August, 2017.

K S Sundaram

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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