

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "B", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER  
AND  
SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER**

<b>ITA No.</b>	<b>A.Y.</b>	<b>Appellant</b>	<b>Respondent</b>
881/Hyd/16	2008-09	M/s. Alladi Drilling Equipments Private Limited, HYDERABAD <b>[PAN: AACCA9420D]</b>	Deputy Commissioner of Income Tax, Circle-1(1), HYDERABAD
882/Hyd/16	2009-10		
883/Hyd/16	2010-11		
884/Hyd/16	2011-12		
913/Hyd/16	2008-09	Deputy Commissioner of Income Tax, Circle-1(1), HYDERABAD	M/s. Alladi Drilling Equipments Private Limited, HYDERABAD <b>[PAN: AACCA9420D]</b>
914/Hyd/16	2009-10		
915/Hyd/16	2010-11		
916/Hyd/16	2011-12		

**C.O. Nos. 52, 53, 54 & 55/HYD/2016**

(in ITA Nos. 913, 914, 915 & 916/Hyd/2016)

Assessment Years: 2008-09, 2009-10, 2010-11 & 2011-12

M/s. Alladi Drilling Equipments Private Limited, HYDERABAD <b>[PAN: AACCA9420D]</b>	Vs	Deputy Commissioner of Income Tax, Circle-1(1), HYDERABAD
<b>(Cross-Objector)</b>		<b>(Respondent)</b>

For Assessee : Shri Talluri Rajendra Prasad, AR

For Revenue : Shri Sunku Srinivas, DR

Date of Hearing : 03-01-2018

Date of Pronouncement : 12-01-2018

**ORDER**

**PER BENCH:**

These are cross-appeals by Assessee and Revenue against the common order of the Commissioner of Income Tax (Appeals)-1,

Hyderabad, dated 04-03-2016. Since common issue is involved in all the assessment years, these appeals are heard together and disposed of by this order. Cross-Objections are by assessee in support of the order of CIT(A), the issue on which assessee has got relief.

2. Briefly stated, assessee, a private limited company is carrying on the business of manufacturer and selling of drilling equipment to distributors and dealers. In the impugned assessment years, assessee has filed returns. Consequent to the information furnished by Central Excise Authorities, who conducted investigation into the business operations of assessee, Assessing Officer (AO) has reopened the assessments and based on the information furnished by the Commissioner of Customs, Central Excise and Service Tax, Hyderabad-III, particularly show cause notice dt. 10-04-2012, the AO considered the turnover determined by the excise authorities as assessee's sales and after excluding the turnover already shown in the books of account brought the difference of turnover as income of assessee. The turnovers considered in the impugned four years are as under:

A.Y.	Income Returned (Rs)	Turnover already recorded in the Books (Rs)	Suppressed Turnover (Rs) determined
2008-09	8,85,320	3,13,55,825	3,30,53,963
2009-10	15,36,706	3,58,57,675	1,78,64,533
2010-11	6,66,025	5,84,27,742	3,67,70,942
2011-12	16,67,520	4,51,27,208	6,32,75,760

2.1. AO brought the entire difference of turnover, as quantified by the Excise Authorities, as income of assessee. In

addition to that in AY. 2008-09, AO noticed that assessee has spent an amount of Rs. 26,25,220/- towards unaccounted purchases as stated by the Central Excise Authorities. This amount was brought to tax. Further, the show cause notice indicated, vide para 40.3, that assessee paid an amount of Rs. 10 Lakhs vide TR-6 Challan dt. 23-09-2011 towards Central Excise Duty. AO holding that to be a cash payment, added the amount in all the impugned assessment years. Thus, the assessments were completed by the AO and raised the demands.

3. Aggrieved, assessee preferred appeals and submitted that entire turnover cannot be brought to tax. Even though assessee relied on the decision of CIT Vs. Kamdhenu Steel & Alloys Ltd., [248 CTR 33] (Delhi) that mere demand of duty under another law cannot be the ground to include the same in assessment under the I.T. Act, assessee mainly submitted that entire turnover cannot be brought to tax and only income can be brought to tax and relied on various case law as stated in paras 6 & 7 of the written submissions before the CIT(A). Accepting the contentions, Ld.CIT(A) directed the AO to estimate the income at 6.2%, stated to be average of the impugned years profit on the gross turnovers. While giving relief on the issue of addition of turnover, Ld.CIT(A), however, confirmed the other addition of unaccounted purchases in AY. 2008-09 and payment of Rs. 10 Lakhs by way of cash in all the years. Ld.CIT(A) did not adjudicate the ground of unaccounted purchases stating that the same was not pressed (Ground Nos. 2.7 & 2.8), whereas assessee has contested the other addition also in the same grounds. With reference to the addition of Rs. 10 Lakhs,

the CIT(A) opined that assessee has paid the amount in cash; hence not an allowable expenditure.

4. In all the Revenue appeals, Revenue is aggrieved on the confirmation of profit at 6.2%, whereas the AO has treated the entire turnover as income. Assessee in all the appeals is mainly contesting the addition of Rs. 10 Lakhs in all the years and also the unaccounted purchases in AY. 2008-09.

5. The Cross-Objections are in support of the CIT(A) order, giving relief on the unaccounted turnover.

6. We have heard the Ld. Counsel and Ld.DR in detail.

7. After considering the rival contentions, we are of the opinion that the order of the CIT(A) as such cannot be upheld particularly, in arriving at the average net profit at 6.2%. The order of CIT(A) is as under:

*“9. Before me, the Assessee made written submissions that amount of Rs. 3,30,53,963 for A.Y. 2008-09, Rs. 1,78,64,533 for A.Y. 2009-10, Rs. 3,67,70,942 for A.Y. 2010-11 and Rs.6,32,75,760/- for A.Y. 2011-12 represented sales turnover and not Income. Hence net income has to be computed and not as income receipt. The Assessee relied upon the decision of ITAT, Hyderabad in the case of M/s. OMRS Wines, Hyderabad Vs. Department of Income Tax and in the case of Badri Prasad Bhagvandas and Co. Vs. CIT reported in 82 Taxman 109 (MP).*

*However these case laws mentioned above, do not apply to assessee case as the business is of different nature. The Assessee net profit to the Gross Turnover over the years have been for*

- a. 4.0% for A.Y. 2008-09,*
- b. 6.8% for A.Y. 2009-10,*
- c. 4.7% for A.Y. 2010-11 and*
- d. 9.3% for A.Y. 2011-12.*

Average is 6.2%

10. The argument of the applicant has strength. The Central Excise are confirmed the findings as 'unaccounted sales'. Assessing Officer also accepts it to be part of Turnover. And the expenditure has been presumed by the assessing Officer, to have been allowed fully. However no analysis has been made between the expenditure allowed with such turnover.

Since no comparative analysis has been done, the unaccounted sales of Rs. 6,32,75,760/- has to be taken sales. The average of 5 years from 2007-08 to 2010-11, works out to be 6.2%. Hence, this turnover income has to be taken as part of sales and profits to be calculated on average net profit at 6.2%. The unaccounted Sales Turnover to be calculated and then to be offered as the income for relevant the financial years.

Ground partly allowed”.

7.1. First of all, how these percentages have been arrived at has not been stated and AO has not examined the rate of profit earned in the respective assessment years. The order of CIT(A) states that average of five years is taken, whereas the average is taken only for four years. In our opinion, the adoption of average over four years may not result in assessment of correct incomes in respect of that year. Either CIT(A) should have directed to adopt the same ratio or should have adopted a higher rate than what was declared by assessee. Since AO was not given any opportunity, the reduction by CIT(A) seems to be arbitrary. Therefore, we are unable to uphold the order of CIT(A) in adopting average rate of profit.

7.2. There are no similar instances, as assessee's business is unique in its own and general rate of profit of other companies may not apply to assessee. Considering that assessee has more or less evaded similar turnover in each of these years than what was disclosed, it would be appropriate to adopt the same ratio of profit on the disclosed turnover to the unaccounted turnover as well.

Assessee would have got away about undisclosed turnovers but for the action by the Central Excise Authorities. We were informed that the issue before the Central Excise Authorities is pending adjudication in the appellate tribunal therein. However, assessee has no objection for adopting the turnovers in income tax proceedings. Therefore, accepting the turnovers as quantified by the Excise Authorities, AO is directed to adopt the same profit ratio as offered by assessee on the disclosed turnovers to the undisclosed turnover as well, in each of the assessment years. Assessee would have got away with higher profit margin than what was disclosed but now that it was caught by the Central Excise Authorities, the savings which assessee could have made is no longer available. Keeping that in mind, we are of the opinion that adopting of the same rate of profit would meet the ends of justice. Accordingly, modifying the order of CIT(A), we direct the AO to verify the profit ratio in each of the assessment years and adopt the same ratio on the undisclosed turnover as well. The order of CIT(A) is modified to that extent.

7.3. Revenue is contending that the entire unexplained turnover has to be brought to tax, as the expenditures are already accounted for. As seen from the show cause notice, Excise Authorities have quantified not only the sales but also the fund flowing in to various accounts in arriving at the turnovers. There are withdrawals also from the said accounts which may be for purchase of material. Therefore, it cannot be stated that assessee has no expenditure towards material purchase or labour expenditure. Therefore, bringing to tax the entire turnover is not correct. Even the case law relied on by assessee before the

Ld.CIT(A) supports the view that only profit/income can be brought to tax, not the entire turnover. Keeping that in mind, we agree with the findings of CIT(A) to the extent that the accrued turnover cannot be brought to tax. Revenue grounds are accordingly considered partly allowed. The Cross-Objections on this are accordingly dismissed.

7.4. Coming to assessee's appeal in AY. 2008-09, there is an addition of Rs. 26,25,220/- towards unaccounted purchases. Even though Ld.CIT(A) stated that ground is not pressed, assessee's Counsel informed that both the issues were contested in ground Nos. 2.7 to 2.9. Therefore, assessee has not consented for withdrawal of ground. It was submitted that assessee had unaccounted turnovers and also unaccounted purchases, therefore addition of unaccounted purchase alone is not warranted. As seen from the show cause notice, the Central Excise Authorities have quantified the turnover based on various inputs like fund flow into various bank accounts etc., AO has not made out any case in those lines, but the entire turnover was brought to tax. Once the turnover was brought to tax, any unaccounted purchases pertaining to that turnover would get adjusted in the same. We are of the opinion that there is no need to separately bring to tax the unaccounted purchases. Moreover, as seen from the show cause notice, there are various withdrawals from various accounts out of the funds received in those accounts. Since those withdrawals could be source for unaccounted purchases or expenditures, it is not appropriate to identify one item and bring it to tax. Since the entire turnover is considered for assessing the income, we are of

the opinion that separate addition of unaccounted purchase is not warranted. Accordingly, the same is deleted.

7.5. In all the impugned years, AO made the addition of Rs. 10,00,000/- based on the show cause notice that assessee has paid an amount of Rs. 10 Lakhs by way of cash. As seen from the show cause notice, Central Excise Authorities have quantified the tax payable in para 40.1 & 40.2 and in para 40.3, they have given credit for Rs. 10 Lakhs paid vide TR-6 Challan dt. 23-09-2011 towards Central Excise Duty. It was the submission before the Ld.CIT(A) that this amount was paid by way of cheque and that date of payment is relevant for AY. 2012-13, which is outside the impugned assessment years. There was no other cash payment in any of the impugned assessment years. But Ld.CIT(A), without examining the facts, confirmed the addition only on the reason that assessee paid the amount in cash. We are unable to approve the findings of Ld.CIT(A). Whether the payment is in cash or by way of cheque, the Central Excise amount paid would be eligible for deduction, out of the receipts of the business concern. This amount of Rs. 10 Lakhs in para 40.3 clearly state to have been paid on 23-09-2011, which is outside the four impugned assessment years, more so pertaining to AY. 2012-13. Why AO brought this amount to tax in all the assessment years is not understandable. We have perused the show cause notice. There is only one payment determined by the Excise Authorities and accordingly, we are of the opinion that addition of Rs. 10 Lakhs in each of the assessment years is not correct. Therefore, assessee's grounds on this issue are allowed. AO is directed to delete the

amounts. The same can be considered in AY. 2012-13, if required as per the provisions of the Act.

8. To sum-up all the Revenue appeals are partly allowed, all the assessee's appeals are allowed and all the Cross-Objections are dismissed.

*Order pronounced in the open court on 12<sup>th</sup> January, 2018*

Sd/-  
**(P. MADHAVI DEVI)**  
**JUDICIAL MEMBER**

Sd/-  
**(B. RAMAKOTAIAH)**  
**ACCOUNTANT MEMBER**

Hyderabad, Dated 12<sup>th</sup> January, 2018

TNMM

*Copy to :*

- 1. M/s. Alladi Drilling Equipments Private Ltd., Plot No. 84, IDA, Phase-III, Cherlapalli, Hyderabad.*
- 2. Deputy Commissioner of Income Tax, Circle-1(1), Hyderabad.*
- 3. CIT (Appeals)-1, Hyderabad.*
- 4. Pr.CIT-1, Hyderabad.*
- 5. D.R. ITAT, Hyderabad.*
- 6. Guard File.*