

आयकर अपीलीय अधिकरण, मुंबई “सी” खंडपीठ मे
Income-tax Appellate Tribunal -“C”Bench Mumbai
सर्वश्री राजेन्द्र,लेखा सदस्य एवं अमरजीत सिंह, न्यायिक सदस्य
Before S/Sh.Rajendra,Accountant Member and Amarjit Singh,Judicial Member
आयकर अपील सं./I.T.A./2875/Mum/2016,निर्धारण वर्ष /Assessment Year: 2011-12

Mr. Irshad Mohd. Siddiqui 105/7, Bharat Nagar, Bandra East Mumbai-400 051. PAN:AQUPS 9181 J	Vs.	Addl. CIT-32 IT Offices, Piramal Chambers Lalbaug, Mumbai-400 012.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

राजस्व की ओर से / **Revenue by:** Shri Rajat Mittal-CIT-DR

अपीलार्थी की ओर से / **Assessee by:** None

सुनवाई की तारीख / **Date of Hearing:** 05/02/2018

घोषणा की तारीख / **Date of Pronouncement:** 02/05/2018

लेखा सदस्य ,राजेन्द्र के अनुसार- PER RAJENDRA, AM-

Challenging the order dated 01/02/2016 of the CIT(A)- 32,Mumbai,the Assessee has filed the present appeal.The assessee,an individual is an importer of metal scrap from Saudi Arabia and selling the same.He filed his return of income on 26/09/2011,declaring total income of Rs.22,57,880/-.The assessment was completed on 21/01/2014,determining the total income of the assessee at Rs.1,80,61,450/- u/s.143(3) of the Act.

2.First ground of appeal, raised by the assessee is not arising out of order of the First Appellate Authority (FAA), hence, same is not being adjudicated.

3.Next ground of appeal is about sustaining an addition of Rs. 85.50 lakhs to the closing stock by way of inputting proportionate expenses towards custom duty and clearing charges. During the assessment proceedings the AO found that the assessee had shown closing stock of Rs. 3.08 crores, that he had valued it at cost without loading the direct expenses, that in profit and loss account he had claimed custom duty (Rs.2.83 crores) clearing charges(Rs. 28.73 lakhs),labour charges(Rs.3.35 lakhs),loading charges(Rs.2.01 lakhs),transportation charges (Rs.2.91 lakhs)and wages(11.95 lakhs)aggregating to Rs.3.23 crores.He observed that expenses incurred were about 29.53% of total purchase of Rs. 11.25 crores made during the year under consideration. He directed the assessee to explain as to whether any of the expenses mentioned above was included in the closing stock. He also directed into produce quantity and amount of opening stock, purchases,sales and closing stock, as the stock statement submitted by him did not contain such details. As the assessee did not file requisite information, he held that proportionate expenses were to be loaded on closing stock @ of 29.53%. He issued a show cause notice to the assessee asking him to explain as to why value

of closing stock should not be enhanced by Rs. 91.40 lakhs. A second show cause notice was issued on 30/12/2013 asking the same question. None appeared before the AO on the given date. On 10/01/2014, the assessee was again asked the show cause notice. On failure of the assessee to file an explanation, the AO revised the computation of stock by making addition of Rs. 91,04,099/-.

4. Third ground of appeal is about sustaining the addition of Rs. 28.73 lakhs u/s. 40(a)(ia) of the Act. During the assessment proceedings, the AO asked the assessee, on more than one occasions, as to why no tax was deducted from clearing and forwarding charges of Rs. 28.73 lakhs. However, the assessee failed to submit details of tax deducted at source or any explanation for not deducting that tax. The AO held that since the assessee was required to deduct tax at source as per the provisions of section 194C of the Act, because of the failure on part of the assessee, he made a disallowance of Rs. 28,73,467/-.

Part B of the ground three is about failure of the FAA to appreciate that proportionate expenses on clearing charges had already been disallowed. It is stated in the ground that rejection resulted in double disallowance.

5. Last ground of appeal is about sustaining the addition of Rs. 38.26 lakhs under section 68 of the Act. During the assessment proceedings, the AO found that the assessee had received loans of Rs. 13.26 lakhs and Rs. 25 lakhs from Abushad Siddiqui (AS) and Khalid Ahmed Mohammad (KAM). He directed the assessee to submit the loan confirmation and to prove the creditworthiness of the persons and also to prove the genuineness of the transaction. As per the AO the assessee furnished confirmation from the parties but creditworthiness of AS and KAM and the genuineness of the transactions were not proved. Vide order sheet noting dated, 18/11/2013, he further directed the assessee to produce copy of the passports of the creditors along with their bank accounts as they were NRIs. As the assessee failed to submit the necessary details, on 10/01/2014, he asked the assessee to explain as to why the amount in question should not be added as the unexplained credit as per the provisions of section 68 of the Act. As per the AO, the assessee did not file any explanation in that regard. Finally, he held that onus was on the assessee to prove the genuineness of the transactions and creditworthiness of the creditors, that the assessee had failed to prove the genuineness of the loan amount of Rs. 38.26 lakhs. He made an addition of the said amount to the total income of the assessee, under the head unexplained cash credit, invoking the provisions of section 68 of the Act.

6. During the appellate proceedings before the FAA, the assessee made submissions about the additions/disallowances made by the AO.

6.1. After considering the same along with the assessment order, he observed that the assessee had incurred cost towards custom duty, clearing charges, labour and transportation charges etc., that he had not loaded these expenses to the closing stock, that he did not submit any reason as to why no explanation was furnished in that regard, before the AO during the assessment proceedings in spite of several opportunities, that even during the appellate proceedings he had submitted explanation with regard to basis labour and loading charges aggregating to Rs. 17.32 lakhs out of the total expenditure of 3.32 crores, that the inability of the assessee proved that he had not to offer four major part of the expenditure, that principally there was no dispute that the assessee was required to value its closing stock by adding the proportionate direct expenditure as per the provisions of the Act, that the explanation submitted by him vide letter dated 03/03/2015 was vague in nature and was without any supporting details, that the custom duty and clearing charges were directly reported to imports, that there was no reason as to why same were not considered as cost for valuing the closing stock, that as per the Accounting Standard custom duty and clearing charges were directly related to imports and had to be loaded in the value of closing stock, that the assessee had not followed the proper method of accounting, that the other items of expenses i.e. labour, loading, transportation and wages expenses were indirect costs, that same were not related exclusive to imports, that the action of the AO including the custom duty and clearing charges components to the closing stock was, that the indirect costs should not have been loaded to the closing stock valuation. He further observed that closing stock was valued by the assessee at the cost of Rs. 3.08 crores, that the ratio of closing stock for purchase was 27.40%, that 27.40% of custom duty and clearing charges debited were to be added to value of the closing stock. He worked out the figure at Rs. 85.50 lakhs accordingly he directed the AO to revise the addition of Rs. 85.50 lakhs as against Rs. 91.04 lakhs.

6.2. With regard to failure to deduct tax at source, the FAA observed that during the appellate proceedings the assessee had relied upon circular number 723 of 19/09/1995 in his support claiming that provisions of section 194 C were not applicable. After considering the circular, the FAA observed that for non-applicability of tax deducted at source under section 194 C, the shipping agent should have been acting on behalf of the non-resident ship-

owners/charterers, that the assessee had submitted a common letter, dated, 19/01/2015 from MAERSK LINE issued to its customers, that from the letter it was not clear as to whether the assessee had made payment of all the clearing and forwarding charges, that it had not produced evidences about payments made to 3 other parties, that it was not proved that the other entities were assessed to tax as per the provisions of section 172 of the Act. He observed that the assessee had grossly failed to submit the complete party wise details of the expenditure incurred along with the relevant documentary evidences to prove how his case was covered by the circular number 723, that the assessee was not entitled to get any relief. Referring to Explanation 2 to section 195, he held that assessee was not entitled to any relief. Finally, dismissed the ground raised by the assessee in that regard.

6.2. About the cash credit additions, the FAA observed that the AO had specifically asked for the copy of the passports of the NRIs along with the copies of the bank statements, that the assessee did not file the bank statements even during the appellate proceedings, that to prove the creditworthiness of the creditors the assessee could have submitted that balance sheet of AS and KAM, that the genuineness of the transaction was also not proved. Finally, he upheld the order of the AO.

7. None appeared for the assessee, as stated earlier. The Departmental Representative (DR) supported the order of the revenue authorities and stated that the assessee did not file any details to substantiate his claims even though both the authorities had given him ample opportunities.

8. We have perused the material on record. We find that the assessee was given ample opportunities by the departmental authorities to explain as to why proportionate charges should not be loaded to the closing stock, that he did not file any explanation in that regard, that the FAA had restricted the addition to the custom duty and clearing charges only, that he had given relief to the assessee about the indirect expenses. As the assessee had loaded custom duty and the clearing charges to the P&L account, it was his duty to include the same while valuing the closing stock for the year under consideration. Failure on part of the assessee resulted in addition made by the AO and partly sustained by the FAA. In our opinion there is no legal infirmity in the order of the FAA, as the assessee has not followed the provisions of the Act as well as the accounting standards. Therefore, confirming the order of the FAA, we decide first ground of appeal against the assessee.

8.1.With regard to disallowance made for not deducting tax at source we would like to mention that the FAA has not considered the argument of double disallowance, as the assessee had not argued the same before him.We are of the opinion that double taxation/double deductions are not to be allowed/made while determining the income of an assessee for a particular year. We would direct the AO to make verification in that regard and restrict the disallowance at one place only, as submitted by the assessee for verification purposes we restore that the issue to the file of the AO. Ground number three is allowed in favour of the assessee, in part.

8.2.As far as addition made under section 68 of the Act is concerned we would like to mention that assessee did not file the most crucial document i.e. the bank statement of the NRI creditors, though he had been asked to do so on more than one occasions. As he could not prove the genuineness of the transaction and the creditworthiness of the NRI.s, so, the departmental authorities were left with no option but to make/confirm the additions of the disputed amount to the total income of the assessee. We do not want to disturb the finding given by the FAA in that regard. Ground number four is decided against assessee.

As a result,appeal filed by the assessee stands partly allowed.

फलतः निर्धारिती द्वारा दाखिल की गई अपील अंशतः मंजूर की जाती है.

Order pronounced in the open court on 2nd May , 2018.

आदेश की घोषणा खुले न्यायालय में दिनांक 2 मई, 2018 को की गई।

Sd/-

Sd/-

(अमरजीत सिंह / **Amarjit Singh**)

(राजेन्द्र / **Rajendra**)

न्यायिक सदस्य / **JUDICIAL MEMBER**

लेखा सदस्य / **ACCOUNTANT MEMBER**

मुंबई Mumbai; दिनांक/Dated : 02/05/2018.

Jv.Sr.PS.

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

1.Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त

5.DR "C " Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अ.न्याया.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**

आयकर अपीलीय अधिकरण, मुंबई /**ITAT, Mumbai.**