

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI
BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER
AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER
ITA No.5058/Mum/2011, (A.Y. 2007-08)

Suvikas Alloys Steel P. Ltd.
103, Ganraj Tower, Prashant Naghar,
Opp. Shivsena Shakha, Naupada,
Thane (W)
PAN: AAICS 1717R Appellant

Vs.

The ITO-8(3)(2)
Aaykar Bhavan, M.K.Road,
Mumbai-400 020 Respondent

ITA No.4278/Mum/2011, (A.Y. 2007-08)

The ITO-8(3)(2)
Aaykar Bhavan, M.K.Road,
Mumbai-400 020 Appellant

Vs.

Suvikas Alloys Steel P. Ltd.
103, Ganraj Tower, Prashant Naghar,
Opp. Shivsena Shakha, Naupada,
Thane (W)
PAN: AAICS 1717R Respondent

Assessee by : Ms.Dinkle Hariya
Respondent by : Shri V. Justin

Date of hearing : 19/01/2018
Date of pronouncement : 11 /04/2018

ORDER

PER G.S.PANNU,A.M:

These are cross-appeals filed by the assessee and the Revenue against the order of CIT(A)-18, Mumbai dated 17/03/2011, pertaining to the Assessment Year 2007-08, which in turn has arisen from the order passed by the Assessing Officer dated 30/12/2009 under section 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. The Grounds of appeal raised by the assessee as well as Revenue read as under:-

Assessee's Grounds of Appeal:-

“1.1 The learned Commissioner of Income -tax (Appeals) - 18 [("the CIT (A)"] erred in not granting proper, sufficient and adequate opportunity of being heard to the Appellant while passing the Appellate order.

1.2 It is submitted that in the facts and the circumstances of the case, and in law, the Appellate order so passed be held as bad and illegal, as the same is passed in breach of the principles of natural justice.

WITHOUT PREJUDICE TO THE ABOVE:

2.1 The Id. CIT (A) erred in confirming the assessment passed by the Income - tax Officer - 8 (3) - 2 [("the A.O.")] without providing proper, sufficient and adequate opportunity of being heard to the Appellant.

2.2 It is submitted that in the facts and the circumstances of the case, and in law, the assessment order so passed by the A.O. be held as bad and illegal, as the same is passed in breach of the principles of natural justice. '

WITHOUT FURTHER PREJUDICE TO THE ABOVE:

3.1 The A.O. erred in making addition of Rs.7,80,95,318/-, being the unsecured loans received by the Appellant during the previous year, to the income of the Appellant by treating the same as income from undisclosed sources.

- 3.2 *While doing so, the CIT (A) erred in -*
- (i) not giving sufficient and proper opportunity to the Appellant to substantiate his case;*
 - (ii) failing to appreciate that the Appellant was prevented by beyond his control to get compliance from the lenders; and*
 - (iii) failing to appreciate that the loans was a genuine loans, taken by the Appellant in the course of its normal business activities.*
- 3.3 *It is submitted that in the facts and the circumstances of the case and in law, no such addition was called for.*
- 4.1 *The Id. CIT (A) erred in partly confirming the addition on account of unexplained investment in fixed assets, to the extent of Rs. 1,94,04,718/-.*
- 4.2 *While doing so, the CIT (A) erred in:*
- (i) basing his action only on surmises, suspicion and conjecture; and*
 - (ii) taking into account irrelevant and extraneous considerations.*
- 4.3 *It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for."*

Revenue's Grounds of Appeal:-

1. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the addition made on account of increase in fixed assets to the extent of Rs.7,80,95,318/- on the grounds that the addition to the fixed assets to such extent is covered by addition of like amount confirmed by him u/s.68 of the Act, without appreciating that there is no correlation between the unsecured loans and increase in fixed assets.*
3. Before we proceed to address specific Grounds raised, a brief background of the dispute can be summarized as follows. In this case, a return of income was filed by the assessee company on 23/10/2007 declaring an income of Rs.15,49,628/-, which was subject to a scrutiny assessment. In the assessment order, the Assessing Officer noted that one Shri Anil Singh, Director of the assessee company attended from time to time but expressed inability to furnish the details called for. The reason advanced was that all the relevant documents of the assessee

company were seized by Director General of Central Excise Intelligence, Mumbai on 28/07/2007 in pursuance to a search action. Considering the inability of the assessee to produce records supporting the return of income, the Assessing Officer assessed the final income at Rs.20,17,89,440/- after making certain additions/disallowances. Firstly, the Assessing Officer noted that unsecured loans had increased since last year to the extent of Rs.7,80,95,318/- and in the absence of any explanation, the said amount was treated as unexplained cash credit under section 68 of the Act. Secondly, the Assessing Officer noted that there is increase in the block of fixed assets in the instant year to the extent of Rs.9,75,00,036/- and in the absence of any evidence to support the same, the said amount was added to the returned income. Thirdly, in the absence of any details of expenses, 25% of power, fuel and other expenses, amounting to Rs.2,44,27,097/- was disallowed and added to the returned income. The three additions so made were carried in appeal before the CIT(A), where also assessee was represented by its Director, Shri Anil Singh, who failed to furnish any credible information. However, the CIT(A) while confirming the addition out of unsecured loans under section 68 of the Act of Rs.7,80,95,318/- noted that the same was available as to be the source of increase in the fixed assets during the year of Rs.9,75,00,036/- and, therefore, the addition on account of fixed assets was confirmed to the extent of Rs.1,94,04,718/- only. The third addition with regard to the adhoc disallowance out of expenses have been deleted by the CIT(A). Not being satisfied, the assessee is in further appeal before us. In the cross-appeal, Revenue has challenged the action of the

CIT(A) in deleting the addition out of fixed assets to the extent of Rs.7,80,95,318/-.

4. Before us, the Ld. Representative for the assessee pointed out that the business of the assessee company has been closed since last five years and its plant and machinery is non-functional since that time. It has also been pointed out that liquidation proceedings had been initiated against the assessee and the old management of assessee company was not contactable and co-operative with the present directors. It was pointed out that the assessment proceedings were attended by the earlier director Shri Anil Singh and that the present director Shri Jagdish P. Agarwal was appointed on 05/11/2008. The Ld. Representative for the assessee explained that the assessee has also been making efforts to obtain the copies of the books of account seized by the Director General of Central Excise Intelligence, Mumbai. Before us, an application for admission of additional evidence has also been made pointing out that assessee had obtained some of the details which are relevant to make the assessment, inasmuch as, the details of addition of fixed assets as well as the details and confirmations from the loan creditors have also been obtained. In this context, a Paper Book has been filed containing pages 1 to 36 and it is contended that such evidences which were not before the lower authorities be admitted for adjudication as the same is relevant to decide the correct tax liability of the assessee. It was also prayed by the Ld. Representative for the assessee that the assessee would be satisfied, if the matter is restored back to the file of Assessing Officer to pass an assessment order afresh after considering the fresh evidence presently being relied upon.

5. On the other hand, the Ld. Departmental Representative did not seriously oppose the prayer of the assessee for setting-aside the matter to the Assessing Officer but pointed out that assessee was allowed adequate opportunities by the Assessing Officer as well as the CIT(A) to produce such evidence as was required to make the assessment. With regard to the appeal of the Revenue, it has been pointed out that the addition has been deleted by the CIT(A) without any basis.

6. We have carefully considered the rival submissions. Factually speaking, it is quite clear that inability of the assessee to furnish requisite details and information called for by the Assessing Officer was primarily because of the search action undertaken by the General of Central Excise Intelligence, Mumbai in July, 2007. Before us a Panchnama dated 28/07/2007 drawn up by the Intelligence Wing of General of Central Excise Intelligence, Mumbai has also been produced to show that various accounts book, namely purchase bill, sale bill, purchase registers, balance sheet, etc. were seized. It has also been canvassed before us that due to the change in the directors, the assessee has not been able to get the originally seized material back. The Ld. Representative for the assessee pointed out that even a legal notice has also been issued by the present management to Shri Anil Singh, the earlier director who was managing the affairs, a copy of such notice dated 24/01/2013 has also been placed on record. In this context, we also find that the additional evidence in the shape of invoices of the fixed assets acquired during the year and the details and confirmation of the loan creditors, which have been placed in the Paper Book at pages 1 to 34 and 35 to 36 respectively are quite germane to assess the correct tax liability in the hands of the assessee.

Therefore, considering the entirety of facts and circumstances, in our view, it would be in the fitness of things that the entire assessment is remanded back to the file of the Assessing Officer who shall allow the assessee a reasonable opportunity to support its return of income and thereafter, make a denovo assessment as per law. Our aforesaid direction shall also cover the Ground raised by the Revenue relating to addition of Rs.7,80,95,318/- on account of cost of fixed assets. Ostensibly, there is no material for the CIT(A) to presume that the unsecured loans considered unexplained under section 68 of the Act are utilized for acquiring the fixed assets, and therefore, the addition deleted by the CIT(A) is on a wrong footing.

6.1 In the result, without going into any of the specific Grounds of appeal raised by the assessee, the order of the CIT(A) is set-aside and the assessment is restored back to the file of Assessing Officer in terms of our observations above.

9. In the result, both the appeals are treated as allowed for statistical purposes, as above.

Order pronounced in the open court on 11/04/2018.

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai, Dated 11 /04/2018
Vm, Sr. PS

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai