

**IN THE INCOME TAX APPELLATE TRIBUNAL, RANCHI
BENCH, RANCHI**

BEFORE SHRI N.S.SAINI, ACCOUNTANT MEMBER
&
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.82/Ran/2016
A.Y. : 2011-2012

Dy. CIT, Circle-1, C.H. Area, Jamshedpur	vs	M/s Hariom Smelters Pvt. Ltd., 2, C.H. Area (New), Sonari, Jamshedpur- 831001
PAN No. : AABCH 5038 F		
(Appellant)	.	Respondent

Revenue by : Shri P.K.Mondal, JCIT
Assessee by : Shri S.K.Poddar & Devesh Poddar, Adv.
Date of Hearing : 24.05.2018
Date of Pronouncement : 25.05.2018

ORDER

Per Pavan Kumar Gadale, JM:

This is an appeal filed by the Revenue against the order of CIT(A), Jamshedpur, dated 18.12.2015, for the assessment year 2010-2011, wherein the Revenue has raised the following grounds of appeal :-

1. *On facts and circumstances of the case, the Ld. CIT(A) erred in deleting the additions made by Assessing officer on account of profit on unaccounted production and sale of MS Ingots for Rs. 29,41,372/- without proper appreciation of facts.*
2. *On facts and circumstances of the case, the Ld. CIT(A), Jamshedpur, is not justified in deleting the addition of Rs. 1,98,05,686/- added by Assessing officer account of unaccounted purchase of raw material.*
3. *On facts and circumstances of the case, the Ld. CIT(A) erred in deleting the additions made by Assessing officer on account of*

Income from cessation of liabilities for Rs. 23,79,922/- without proper appreciation of facts.

4. *On the facts and circumstances of case, Ld. CIT(A), Jamshedpur, grossly erred in not following the tenets of the provisions of section 234B as amended in the year 2006.*
5. *The applicant craves leave to pray add/amend, modify any of the grounds of Appeal.*

2. Brief facts of the case are that the assessee is engaged in the business of manufacturing of rod, bar etc. and filed the return of income for the assessment year 2010-2011 on 26.09.2010 with a total income of Rs.1,01,340/- and the return of income was duly processed u/s.143(1) of the Act and the case was selected for scrutiny under CASS. Subsequently, notice u/s.143(2) & 142(1) of the Act were issued to the assessee. Thereafter the AO completed the assessment and made the addition on account of profit on unaccounted production and sale of MS Ingots, purchase of raw material and income from cessation of liabilities and assessed total income at Rs.3,23,05,810/- and passed order u/s.143(3) of the Act, dated 19.03.2013.

3. Aggrieved by the assessment order, the assessee has filed an appeal with the CIT(A). In the appellate proceedings Id. AR of the assessee argued the grounds and reiterated the submissions and Id.CIT(A) having considered the findings and the submissions of the assessee dealt on the disputed issue and partly allowed the appeal of the assessee.

4. Aggrieved by the order of CIT(A), the Revenue has filed an appeal before the Tribunal.

5. Before us, Id.DR relied on the order of AO and submitted on the first dispute issue that the assessee has himself declared the GP @16.52%, therefore, the AO was justified in determining the gross profit on clandestine sale during the year. On the second disputed issue addition on account of unaccounted purchase of raw material, the Id. DR submitted that the AO made the addition as the undisclosed investment of the assessee in the business from which the assessee procured unaccounted raw-materials and was doing unaccounted production and sale. On the third disputed issue of addition on account of cessation of liabilities, the Id.DR submitted that the income was generated in the hands of the assessee and the AO has rightly made the addition. Ld. DR further submitted that without considering the above findings of AO, the CIT(A) has erred in deleting the aforesaid additions and prayed for allowing the appeal.

6. Contra, Id. AR of the assessee relied on the order CIT(A).

7. We have heard the rival submissions and perused the material on record. On the first disputed issue, we find that the CIT(A) called for a remand report from the AO and found that the AO has sent the remand report without giving any parawise comments and after considering the submissions of the assessee, remand report and the findings of AO, the CIT(A) found that the figure taken by the AO pertains to F.Y.2008-09 and not for the F.Y.2009-10 and though the AO has reduced the suppression of sales to the tune of Rs.6,06,46,869/- but the GP rate taken to arrive income

is not correct, therefore, the CIT(A) has restricted the disallowance to Rs.29,41,372/- instead of Rs.1,00,18,862/- made by the AO. The observations of the CIT(A) on this disputed issue are as under :-

“4.3 I have gone through the order of the learned AO as well as the remand report and the written submission made by the appellant. The AO in his order stated that the officers of directorate general of central excise (Intelligence regional unit Jamshedpur and Rourkela) conducted search operation simultaneously in the factory premises Mohishole, Dhalbhumgarh and its secret office and residence of Pawan Poddar Director on 30.06.2009. Several incrementing document and laptop was recovered from the secret office and huge shortage of stock noticed on physical verification. From the incrementing document and print out of documents stored in laptop and further stock found on physical verification it is concluded by the team of DGCEI that 3069.883 MT of MS Ingots is short. Shri Pawan Kumar Poddar Director of company admitted the shortage in his statement recorded on 01.07.2009. A show cause letter issued to the assessee by DGCEI shows that the assessee is engaged in clandestine production and sale of MS Ingots of 8135.240 MT during the period 22.09.2008 to 12.06.2009 which covers two financial years 22.09.08 to 31.03.2009 and 01.04.2009 to 12.06.2009. The AO in his order analyzed day to day final quantification of duty liabilities as per daily report of HSPL which has been determined at 2922.96 MT for which value has been arrived at Rs. 6,06,86,869/-.

The assessee has declared GP @16.52% , taking the same rate of GP @16.52% of Rs. 6,06,86,869/-, the GP has been determined at Rs. 1,00,18,862/- which is added to the total income and no other deduction is allowed.

The assessee in his submission stated that all production and sale made by the company is accounted for. There is no unaccounted production and sale. Ld. DGCEI of Kolkata unit ascertained the unaccounted production on estimate without any concrete evidence.

The assessee further submitted which are as follows:

Profit a unaccounted production and sales.

6. Please note appellant denies any unaccounted production and sales.

7. Even if assuming that the so called production was made. The profit rate applied by Ld. ACIT is too high.

The gross profit in case of a manufacturing industry is (opening stock (+) Purchase (+) Direct expenses (-) sales (-) closing stock) Ld. ACIT have arrived at gross profit rate wrong. Which is against the accounting norms?.

The gross profit rate in the case of appellant case is calculation as under:-

	148139420
Cost Material consumed	101120330
Decrease Increase in Stock	1355083
Carried Inward	755250
Wages	552350
Depreciation	2189020
Electricity Expenses	27065307
Total	133037340
Gross Profit	15102080

% age 10.19%

The assessee further stated that sale/raw materials consumption are also F.Y. 2008- 09. A copy of audited account was enclosed. From perusal of above submission it is found that while deriving GP the assessee has taken some figure are not acceptable example depreciation.

As per manufacturing and trading account

Sales	Rs. 14,81,39,420/-
Cost of material consumed	Rs. 10,11,20,330/-
Decreased /increased in stock	Rs. 13,55,250/-
Carriage inward	Rs. 7,55,250/-
Wages	Rs. 5,52,350/-
Electricity expenses	<u>Rs. 27,06,5307/-</u>
	Rs. 13,08,48,320/-
	Rs. 13,0848,320/-
GP	Rs. 1,72,91,100/-
GP%	Rs. 11.67%

Again this the assessee submission shows gross profit @10.19% it is also found that the assessee has correctly stated that the figure taken by AO pertains to F.Y. 2008-09 and not 2009-10. Though the AO has deduced the suppression of sales to the tune of Rs. 6,06,46,869/- but the GP rate taken to arrive income is not correct.

Based on facts stated above, the GP rate is taken @11.67% as stated here in above to arrive at income on undisclosed sales which comes to Rs. 70,77,490/- thus the assessee will get a relief of Rs. 1,00,18,862 - 70,77,490 = 29,41,372/-."

8. Ld.DR before us could not bring any new material fact to controvert the above findings of CIT(A), except relied on the findings of AO, which the CIT(A) has categorically considered and deleted the addition. Accordingly, we do not see any reason to interfere with the order of CIT(A), which is upheld and we dismiss this ground of appeal of Revenue.

9. Second disputed issue is with regard to deleting the addition on account of unaccounted purchase of raw material. We find that the AO observed that the total funds available with the assessee as reflected in the balance sheet on which the assessee procured raw materials. However, the CIT(A) observed that had it been the case, undisclosed sales would be made out of undisclosed produced, the question of shortage of stock will never arise. Ld.DR before us submitted that the AO made the addition as the undisclosed investment of the assessee in the business from which the assessee procured unaccounted raw-materials and was doing unaccounted production and sale. In our opinion, the matter needs further verification at the end of AO. Accordingly, we remit this issue to the file of AO, who shall verify and examine and pass order after affording adequate opportunity of hearing to the assessee and the assessee is directed to cooperate with the AO in submitting the information. This ground of appeal is allowed for statistical purposes.

10. So far as the third disputed issue is concerned, the CIT(A) has called for a remand report from the AO, however, the AO could not give proper comments and relied on the addition. The CIT(A) observed that there is no

cessation of liability till the assessee pass the entry as such. Since the creditors have written off bad debts it does not need to pass a contra entry as such till the same is ascertained by the assessee. As there is no cessation of liability during the period under consideration, the addition made by the AO is not justified. The relevant observations of CIT(A) are as under :-

“6.3 I have gone through the order of the learned AO as well as the remand report and the written submission made by the appellant. On perusal of assessment order and assessee’s submission it is found that Smridhi Sponge Pvt. Ltd. written his bad debts of Rs. 29,79,922/- considering the assessee’s debts not recoverable. Writing off bad debts does not mean that this cannot be recovered in future. M/s Smridhi Sponge Pvt. Ltd. written off bad debts and subsequently recovered Rs. 6 lacs in the year 2010- 11 from the assessee is reflected as income during the relevant year. This shows that even after writing off the debts recovery has been affected putting pressure on assessee. Thus there is not cessation of liability to pay the debts. Had it been the case there should have not been any recovery. But as soon as the assessee came to know the facts that the debts have been written off by Smridhi Sponge Pvt. Ltd, the assessee credited his account and shown income in the relevant year. Therefore there is no cessation of liability till the assessee pass and entry as such. Since the creditors have written off bad debts it does not need to pass a contra entry as such till the same is ascertained by the assessee. As there is no cessation of liability during the period under consideration, the addition made by the AO is not justified. This further gets support from the fact that in double entry system in accounting if creditors written off Rs. 29,79,922/-, the assessee has to credit Rs. 29,79,922/- which is not been. The AO has added only Rs. 23,79,922/- as the assessee paid Rs. 6,00,000/- has been considered. Since it is considered by AO it cannot be said that there is cessation of liabilities.

Accordingly, the addition made by AO for Rs. 23,79,922/- is hereby deleted.”

11. To controvert the above findings of CIT(A), Id.DR could not bring any new material fact, except relied on the findings of AO, which the CIT(A) has categorically considered and deleted the addition. Accordingly, we do

not see any reason to interfere with the order of CIT(A), which is upheld and we dismiss this ground of appeal of Revenue.

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

Order pronounced in the open court on 25/05 /2018

Sd/-

(N.S.SAINI)

ACCOUNTANT MEMBER

Ranchi, Dated 25/05/2018

Prakash Kumar Mishra , Sr. Ps

Copy of the Order forwarded to :

1. The Appellant –
2. The Respondent –
3. The CIT(A) concerned
4. CIT , concerned
5. DR, ITAT, Ranchi
6. Guard file.

Sd/-

(PAVAN KUMAR GADALE)

JUDICIAL MEMBER

BY ORDER,

//True Copy//

SR.PS, ITAT, RANCHI