

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

**BEFORE SMT P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 339/Hyd/2016
Assessment Year: 2011-12**

HPC Electricals Ltd.,
Secunderabad.

vs. Dy. Commissioner of Income-
tax, Circle – 2(2), Hyderabad.

PAN – AAACH 6014 Q

(Appellant)

(Respondent)

Assessee by : Shri S. Syam Sunder Rao
Revenue by : Smt Geetinder Mann

Date of hearing : 21/06/2018
Date of pronouncement : 27/07/2018

ORDER

PER S. RIFAUR RAHMAN, A.M.:

This appeal filed by the assessee is directed against the order dated 31/12/2015 of CIT(A) – 2, Hyderabad for AY 2011-12.

2. Briefly the facts of the case are, assessee company, engaged in the business of electrical contract works, filed its return of income for the AY 2011-12 on 17/09/2011 admitting total income of Rs. 92,00,018/- Subsequently, the case was selected for scrutiny under CASS and notices u/s 143(2) and 142(12) were issued and served on the assessee. In response to the said notices, the assessee furnished the information as called for.

3. During the assessment proceedings, the AO asked the assessee to furnish purchase invoices and AO noticed that the assessee company had debited Rs. 20 crores towards purchases and assessee did not produce the delivery challans, lorry receipts/bills for

an amount of Rs. 1,13,79,630/-. When, asked as to why the above purchase amount should not be treated as bogus, the AO observed that the assessee failed to substantiate its claim. Hence, the AO treated the said amount as bogus and disallowed.

4. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A).

5. Before the CIT(A), the assessee, inter-alia, submitted that it had submitted all the relevant information, documentary evidences and supporting bill, confirmation letters from the suppliers to substantiate the purchase of materials along with details of payments to them. He contended that, however, the AO without considering the documentary evidence, disallowed an amount of Rs. 1,13,79,630/- treating the same as bogus purchases.

6. The CIT(A) after considering the submissions of the assessee, confirmed the disallowance made by the AO by observing as under:

“7. However, it is to be noted that the AO has not doubted all the purchases made by the assessee, but a portion of it, as the assessee has not conclusively established the fact that purchases to the extent of Rs.1,13,79,630/- out of total purchases of Rs.20 Cr., are made from the supplier located at Anakapalli, Andhra Pradesh to the end user stationed in Kalvakurthi, Telangana. During the appeal proceedings also, the AR has not rebutted the AO's finding of impossible nature of transporting the materials worth Rs. 1,13,79,630/- by three wheeler vehicles and other mentioned vehicles. Further, AR has failed to rebut the AO's finding satisfactorily with regard to non-maintenance of L.Rs and D.Cs when it is making huge value of purchases.”

7. Aggrieved by the order of CIT(A), the assessee is in appeal before us raising the following grounds of appeal (revised):

1. The order of the Ld.CIT(A)-2,Hyderabad in ITA.No.0082/2014-15, dt.31.12.2015 for the AY 2011-12 may be erroneous both in law and facts of the case;

2. That in the facts and circumstances of the case as transpired by the impugned Asst.order and also the appellate order cited supra, the Ld.CIT(A) ought not have confirmed the addition of Rs.1,13,79,630/- which was formulated by the Ld.AO towards the alleged 'Bogus purchases' of the material' on the presumptive basis.

3. Having observed that the assessee-appellant produced purchase invoices, way bills, Ledger extract of the appellant account in the books of the supplier duly certified by the Chartered Accountant-confirmation of utilization of steel by the Asst.Engineer, Constructions, APCPDL, Mahaboobnagar Dt., and other supporting documentary evidence referred to in para 6 of the appellate order, the Ld. CIT(A) ought not have sustained the aforesaid addition in violation of the principles of natural justice:

4. In the context of confirmation of the purchases to the aforesaid extent by the concerned supplier at Anakapalli who accounted for the same as its income; in view of quantitative tally of the steel utilized in the construction work as authenticated by the Contractee and having accepted the 'freight charges of RS.2,98,881/- attributable to the aforesaid purchases and other evidences on the record, the Ld. CIT(A) ought not have sustained the aforesaid addition;

5. For these reasons and other reasons which may be advanced during the course of hearing of the appeal, it is requested that the aforesaid addition of Rs. 1, 13,79,630/- may be ordered to be deleted so as to be in conformity with the provisions of Law”

8. Before us, the Id. AR of the assessee filed written submissions, which are as under:

1. Attention is invited to the preamble of the Memorandum of written submissions, case, dated 21.07.2017 and other submissions contained therein. As recorded therein, the assessee-appellant undertook a work, viz., erection of HT/LT Electrical Line works at Kalwakurthi of Mahaboobnagar dt., of the then unified State of Andhra Pradesh and presently Telangana State and in connection therewith, it consumed Raw material worth Rs.21,55,76,538/- and out of the same, the steel purchases effected by it from three concerns, viz., M/s.Ratnam Industries (Rs.50,65,591/- 158.63 M.tons; Rs.2,83,43,172/- from M/s. Sri Vijayalakshmi Traders, Anakapalle - 801.225 M.Tons and Rs.73,61,979/- from M.M.Steels - 228.281 M. tons amounted to Rs.4,07,70,742/-). In relation to the Steel purchases worth Rs.1,13,79,630/- (out of the total purchases of

Rs.2,83,43,172/- made from M/s.Sri Vijayalakshmi Traders, Anakapalli), the Ld.AO disallowed the claim and made addition to the aforesaid extent towards alleged bogus purchases of steel on the observations that on verification of the Web Site www.aptransport.org. It is noticed that some of the invoices issued by the above supplier-concern revealed that the above goods were transported from Anakapalli to Kalwakurthi through 3 wheelers, two wheelers, motor car and school bus etc., that the assessee did not produce the delivery challans, lorry receipts bills; that the distance between those two places is about 590 kms. and in view of the heavy weight of the material, it is not possible to transport the material through the above vehicles. The Ld.CIT(A) also endorsed the aforesaid findings of the Ld.AO and confirmed the impugned addition of Rs.1,13,79,630/- and being aggrieved of the same, the assessee is now on appeal before the Hon'ble ITAT.

The various observations of the Ld.AO as contained in the impugned asst order and as confirmed by the Ld. CIT(A) may not appear to be valid in the eyes of law for various reasons recorded in the earlier Memorandum of written submissions dt.21.07.2017, the substance of which is reiterated and submitted INFRA.

1.1. During the course of asst. proceedings, the assessee filed a detailed reply, dt.18.03.201 vide page 83 of the paper book; stating , inter-alia, that the supplier concern did not keep the delivery challan; that those DCs were directly sent along with invoices; that payments were made to the respective Drivers of the vehicles at the time of delivery of goods in the project area of KALWAKURTHI; that those numbers of the vehicles were mentioned by the above supplier company, viz., M/s.Vijayalakshmi Traders, Anakapalli as could be verified from the 16 Tax invoices and also way. bills obtained by them from the Commercial Tax Department - vide Page Nos.112 to 143 of the paper book and hence accountability cannot be fixed on the assessee if the supplier company noted the vehicle numbers wrongly in the relevant documents, viz., Tax Invoices and also way bills; that the assessee undertook verification of the quality and quantity of the material; that the assessee filed way bills; tax invoices (numbering 16) and also confirmation from supplier company about supply of the stock of steel; It was also specifically requested in the above reply dt.18.03.2014, to cause independent verification of the claim of purchases to the above extent through his ITI and also to undertake verification with the concerned authorities at Anakapalli, viz., Commercial Tax and Income Tax dept., above concern, which is stationed at Anakapalli and such verification was not undertaken by the Ld.AO before drawing adverse conclusions against it and thus

there is non adherence to the principle of natural and on this technical flaw itself, the impugned addition may be void AB-INITIO;

1.2. That as per the certificate issued by the Chartered Accountant, the consumption of steel during the year under review was 1,181.931 M.tons (vide page 106 of paper book) and the same was certified by the Contractee - viz., Divisional Engineer, Constructions, APCPDL, Mahaboobnagar - vide page 70 of paper book - (last bill) while effecting payment to the assessee; and the quantity referred to above is also in tally with the quantities recorded in the Schedules I,II, III & IV issued by the above authorities (vide page Nos.56 to 78 of the Paper book. Attention is also invited to the Memorandum of written submissions dt.21.07.2017 - vide paras 7.1 to 7.24 and paras 8.1 to 8.11), where the details of quantity were recorded and discussed in depth. Thus in view of certification of consumption of steel of 1,181.91 M.tones by the authorities and also Chartered Accountant as per the details recorded above, the Ld.AO ought not have held that the purchases to the extent of Rs.1,13,79,630j- are bogus on presumptive basis;

1.3. Attention is also invited to the certificate dt.29.07.2015 issued by the above supplier concern viz., M/s.Vijayalakshmi Steel Traders, Anakapalli (page 79 of paper book) and also certificate, dt.29.07.2015 issued by Shri Rama Associates, Chartered Accountants, Visakhapatnam (page No.82 of paper book) as per which the assessee purchased steel of 801.225 tons(worth Rs.2,83,43,172/-) from the above concern and that the above supplier company reflected the same in their books of accounts, Returns were filed with commercial authorities and also IT authorities for the FY 2010-11.

1.4. Even according to the observation of the Ld.CIT(A) - vide page 30 of the paper book), the assessee produced all the relevant documents with the AO at the time of asst. proceedings in support of its claim that the above material was purchased and utilized in the work; viz., purchase Invoice, Way bill, given by the Commercial Tax Dept., Ledger extract of the appellant's account in the books of the supplier duly certified by the Chartered Accountant, Confirmation of utilization of steel by the Asst Engineer, Constructions, APCPDL, Mahaboobnagar dt., details of party wise raw material suppliers along with quantum of material purchased during the FY 2010-1 and a letter, dt.18.03.2014. In the context of abundant documentary evidence filed before the Ld.AO he ought not to have arrived at adverse inferences/conclusions holding that there existed bogus purchases on mere presumptions and without the support of any cogent material/ evidence.

1.5. It may be reiterated and submitted that the Contractee is a Govt. Dept., with whom the assessee entered into a works contract (agreement) No.CGM/Project/Hyd/MBNR/03/08-09 and unless the department is satisfied with the quality in execution of the work done by the assessee in all respects, the Govt. might not have passed the bills raised by the assessee on periodical basis; in that if there is any deviation made by the assessee with reference to the quantity / quality of the material utilized in the construction, the assessee would not have got the payments from the Govt. and nothing prevented the Ld.AO from causing independent verification with the Contractee, viz., State Govt. with regard to the quantity used in the construction work and the payments made by the Govt. to the assessee-company.

1.6. Further as recorded in the earlier Memorandum of written submissions, dt.21.07.2017- vide para 7.20,7.21,7.22, 8.7, 8.8., 8.10), the total freights debited to the P&L account for the Asst.Year under review amounted to Rs 45,33,366/- and the same included freight of Rs.2,93,881/- attributable to the aforesaid disputed purchases of 1,13,879,630/- and such freights were allowed by the Ld.AO and when the freight claim is accepted, he ought not have rejected the goods transported by the supplier company to the aforesaid extent. Further, if the Ld.AO disbelieves the mode of transportation, he ought to have rejected the propionate claim in respect of freights of Rs.2,93,881/- and not the purchases itself.

1. 7. As could be seen from its account copy of the assessee appearing in the account of M/s. Sri Vijayalakshmi Steel Traders, Anakapalli , the total sales of steel effected during the financial year relevant to AY 2011-12 were Rs.2,83,43, 176/ - and the same was fully paid by the assessee through bank RTGS only. This account also contained the details of tax in voices and the payments made on different occasions through RTGS and the same was also confirmed by the seller viz., Vijayalakshmi Steel Traders.

1.8. Further, the authorities observed that disallowance was made only to the extent of Rs. 1,13,79,630/- out of the total purchases of Rs.20 crores. This is not factually correct as evidenced by the. Trading, P&L a/c. for the year ended 31.03.2011. As could seen therefrom the assessee consumed raw material worth Rs.21,55,76,538/- and such raw material comprised of not only steel and other materials. As recorded in the preceding para the steel purchases during the year under review were of the order of Rs 4,07,70,742/- (1,181.931 tonnes consumed) and out of the same the Ld.AO disallowed an

amount of Rs.1,13,79,630/- and it means that 1/4th of the expenditure incurred towards steel purchases was disregarded by the Ld.AO which may be highly improbable.

1.9. In the aforesaid factual and legal background of the case, it is humbly submitted that the impugned disallowance of Rs.1,13,79,630/- may not appear to be justifiable and or lawful and it is hence requested that the same may be ordered to be deleted.”

9. Ld. DR, on the other hand, relied on the orders of revenue authorities.

10. Considered the rival submissions and perused the material on record. We notice that AO has disallowed purchases to the extent of Rs. 113,79,630/- as the assessee failed to substantiate by submitting relevant papers to the satisfaction of AO and whatever information submitted with regard to transportation, AO noticed that these were transported in the vehicles which are not appropriate to transport the heavy goods. Now, assessee submits that these goods were utilized in various places in the govt. approved projects which are subject to audit at various points. Further, these purchases were confirmed by the officials as well as the suppliers. Moreover, the projects were completed and duly certified by the respective authorities and therefore entire purchases cannot be disallowed. Assessee claims to have submitted these details before revenue authorities and also submitted before us copy of bills etc. in the form of paper book. Considering the above facts, we deem it fit to remit this issue back to the file of the AO to verify the relevant information afresh and determine the disallowance after giving proper opportunity of being heard to the assessee. Therefore, the grounds raised by assessee are allowed for statistical purposes.

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

Pronounced in the open Court on 27th July, 2018.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, Dated: 27th July, 2018

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Copy to:-

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- 3) *CIT(A) – 2, Hyderabad.*
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- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 6) *Guard File*