

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'B', KOLKATA**

[Before Shri P.M. Jagtap, AM & Shri S.S. Viswanethra Ravi, JM]

I.T.A. No. 1681/Kol/2016

Assessment Year: 2003-04

Rawmet Commodities Pvt. Ltd.....Appellant
40/7, Ballygunge Circular Road,
Kolkata - 700 019
[PAN: AACCR 2374 M]

D.C.I.T., CIR - 12(1), Kolkata.....Respondent
Kolkata.

Appearances by:

Shri S. Joshi, FCA appearing on behalf of the Assessee.

Shri S. Dasgupta, Addl. CIT, DR appearing on behalf of the Revenue.

Date of concluding the hearing : July 05, 2018

Date of pronouncing the order : August 31, 2018

ORDER

Per P.M. Jagtap, AM:

This appeal filed by the assessee is directed against the order of Ld. CIT (Appeals) - 4, Kolkata dated 15.07.2016 and the solitary issue involved therein relates to the addition of Rs. 34,56,797/- made by the A.O. and confirmed by the Ld. CIT(A) on account of the alleged concealed consultancy fees.

2. The assessee in the present case is a company which is engaged in the business of rendering consultancy services related to export-import ores. The return of income for the year under consideration was filed by it on 14.10.2003 declaring a total income of Rs. 72,03,329/-. The assessee company during the year under consideration had provided consultancy services to a foreign company namely, Sudamin Metal GmbH and had reported receipt of

foreign exchange earnings from the said company. During the course of assessment proceedings, the assessee submitted all the bills raised by it on foreign company for commission and also filed Foreign Inward Remittance Certificates (FIRCs) issued by its banker HSBC for the consultancy fees received by it in convertible foreign exchange. From the perusal of the FIRC filed by the assessee, the A.O. found that the assessee had received excess payment against the corresponding bills amounting to US\$ 73237.23 as under:

<i>Invoice No</i>	<i>Bill Amount (US\$)</i>	<i>Receipt (US\$)</i>	<i>FLCI Sl. No.</i>	<i>Excess</i>
<i>RCPL/02-03/03</i>	<i>16257.17</i>	<i>60848.24</i>	<i>341334</i>	<i>15565.95</i>
<i>RCPL/02-03/05</i>	<i>29025.12</i>			
<i>RCPL/02-03/08</i>	<i>6865.97</i>	<i>8837.87</i>	<i>344815</i>	<i>1971.9</i>
<i>RCPL/02-03/09</i>	<i>12721.76</i>	<i>81025.13</i>	<i>346514</i>	<i>55699.38</i>
<i>RCPL/02-03/10</i>	<i>12603.99</i>			

In this regard, it was explained by the assessee that the amount of US\$1971 represented excess payment made by the foreign company which was subsequently adjusted in the next year against the invoice dated 23.05.2003. As regards the balance amounts allegedly received in excess, it was explained by the assessee that the corresponding receipts were not only against the Invoice No. 3, 5, 9 & 10 as mentioned in the relevant FIRCs but the same were towards other invoices also. This explanation of the assessee was not found acceptable by the A.O. and by relying on the FIRCs, he treated the amount of Rs. 34,56,797/- as the concealed consultancy fees of the assessee. Accordingly, addition to that extent was made by him to the total income of the assessee in the assessment completed under section 143(3) vide an order dated 23.07.2006.

3. Against the order passed by the A.O. u/s 143(3), an appeal was preferred by the assessee before the Ld. CIT(A) who confirmed the addition of Rs. 34,56,797/- made by the A.O. on account of the alleged concealed consultancy fees. On further appeal, the Tribunal vide its order dated 29.05.2008 passed in ITA No. 282/Kol/2008 remitted the matter back to the Ld. CIT(A) for deciding the same afresh after affording reasonable opportunity of being heard to the assessee. Accordingly, an opportunity was afforded by the Ld. CIT(A) to the assessee and availing the same, the following submissions were made on behalf of the assessee in support of its claim that the addition of Rs. 34,56,797/- made by the A.O. was not sustainable:

"i. During the relevant year, the appellant ,a company registered under the Companies Act, 1956 was engaged in providing consultancy services to foreign enterprise, Sudamin Metal GmbH (Sudamin), and an Indian entity Ispat Metallics India Ltd.,(Ispat) in connection with steel plant raw materials. It derived income towards consultancy services fees in foreign currency, from foreign entity, and in domestic currency from Indian entity. It maintained banking account with HSBC and being a foreign currency earner was entitled to maintain Exchange Earner's Foreign Currency (EEFC) in US Dollar (USD) and domestic currency account Indian Rupees (INR).

ii. The assessee was incorporated during the relevant financial year and took over the running business of a partnership firm Rawmet Resources. It's first accounts for the relevant financial year 2002-03 was drawn from 1st January, 2003 till 31st March, Thus the income of the assessee was for a three month period from 1.1.2003 till 31 .03.2003.

iii. The assessee raised invoice upon its clients i.e. Sudamin and Ispat and received payments from them in USD and INR respectively. The assessee raised 13 invoices on Sudamin for aggregate value of USD 304,031 .16 equivalent to Rs. 143,66,333.66 and raised 2 invoices on Ispat with total value of Rs. 58,00,000/- .

Its income from consultancy during the year was Rs. 201,66,333.66.

iv. The payment against the invoices were deposited in the following bank accounts of the assessee -

HSBC Bank Ltd., Shakespeare Sarani A/c No. 025347725511(EEFC)

HSBC Bank Ltd., Shakespeare Sarani A/c No. 025347725001 (INR)

v. The remittance received from Sudamin being in USD, were equally split by the bank for credit of 50% into EEFC account and balance 50% was converted and credited into INR. The assessee was explained that this was necessary as per RBI guidelines at the relevant time.

For each and every remittance received in USD, the bankers', HSBC, issued a remittance certificate - Foreign Inward Remittance Certificate(FIRC) which is an advise as well as evidence of receipt of foreign currency on behalf of the assessee. The certificate contained added information of the name of the remitter, remitting bank, amount remitted in USD and purpose of remittance. Bank may also provide details of conversion of USD in INR and account of the receiver to which the remittance is credited.

vi. There is no dispute regarding remittance from Ispat. The impugned remittance relates to Sudamin on which the assessee raised invoices and received payment including an advance of USD 2000. In case of remittance from Sudamin, the bank issued the FIRC but the information contained in the FIRC and those as per invoice do not tally.

vii. Due to the difference in the said information, the Ld. ITO, relying solely on the erroneous information in FIRC, disregarded to information as per ledger, books of accounts, profit & loss account, bank statement and the explanation and information furnished by the assessee.

viii. The impugned invoices are as under -

Invoice No.	Bill Amount in USD
RCPL/02-03/03	16257.17
RCPL/02-03/05	29025.12
RCPL/02-03/08	6865.97
RCPL/02-03/09	12721.76
RCPL/02-03/10	12603.99
Total USD	77474.01

Number dated	Amount as per FIRC	Corresponding invoice no in FIRC
341334	60848.24	3, 5

344815	8837.87	8
346514	81025.13	9, 10
Total USD	150711	

Considering the above difference between the impugned FIRC's (USD 150711.24) and impugned invoice (USD 77474.01), the Ld. ITO concluded that the assessee had concealed income of USD 73,237.23, i.e. INR 34,56,797/-.

ix. However, in coming to the above conclusion the Ld. ITO totally ignored the following facts which were brought on record and necessary evidence submitted to her in the course of assessment proceedings -

a) That the assessee has raised invoice on Sudamin for total USD 304,031.16 against which it received payment of USD 306031.06. The difference of USD 2000 was adjusted in subsequent invoice in FY 2003-04 (AY 2004-05).

b) That the remittance against the impugned invoices and FIRC's were credited in the bank account of HSBC, Shakespeare Sarani Account of the assessee. The said account is disclosed in the books of account, all entries relating to the credit in the said account is recorded in the books as also each and every single invoice raised upon Sudamin.

She failed to appreciate that when the account itself is recorded and each and every single invoice as well as the remittance is recorded in the books of account and the Balance Sheet and Profit & Loss account are in agreement with the books of account, there cannot be case of concealment of income.

c) The Ld. ITO relied heavily on the presumption that neither the bank nor the foreign company could make any error but the assessee cannot be fault free. The assessee had produced books of account, bank statement, invoice and every single detail called for and no abnormality was found in the same. She did not show that the invoices were not recorded in the books, nor did she state that the remittance evidenced by the impugned FIRC's was not recorded in the books of account.

In the absence of any such observation, it is out of place to presume that there was excess receipt and/or there was concealed income.

d) The Ld. ITO did not appreciate that there are some invoices, reference for which is not made in the FIRC. She failed to examine the entire position of invoicing and remittance from Sudamin and she only some of

the invoices were picked up, she felt into belief that there is a case of excess income not disclosed by the assessee.

x. The appellant submits herewith a statement of invoice raised upon Sudamin, its entries in the books of accounts, FIRCs against evidencing payment received, entries of remittances received in the books, statement of bank account to corroborate the fact that there is no case of concealment and the assessee has received just USD 2000 in excess from Sudamin against one remittance, which was subsequently adjusted by the debtor in FY 2003-04.

It is also submitted that the payments against the invoice raised in FY 2002-03 were received partly in FY 2002-03 and partly in FY 2003-04.

xi. The appellant submits herewith the following documents-

<i>a. Statement of reconciliation</i>	<i>page nos</i>	<i>1 to 2</i>
<i>b. Copy of invoice and corresponding FIRCs</i>	<i>page nos</i>	<i>3 to 24</i>
<i>c. Copy of EEFC bank statement</i>	<i>page nos</i>	<i>25 to 30</i>
<i>d. Copy of INR bank statement</i>	<i>page nos</i>	<i>31 to 41</i>
<i>e. Copy of ledger account</i>		
<i>Commission-INR</i>	<i>page nos</i>	<i>42 to 43</i>
<i>Commission-USD</i>	<i>page nos</i>	<i>44</i>
<i>f. Copy of ledger account</i>		
<i>Sudamin</i>	<i>page nos</i>	<i>45 to 48</i>
<i>Sudamin-FY 2003-04</i>	<i>page nos</i>	<i>49</i>
<i>g. Financial Statement FY 2002-03</i>	<i>page nos</i>	<i>50 to 64</i>

In view of the above, the appellant prays for-

Deletion of the addition of Rs. 34,56,797/- and all consequences thereof.

4. The Ld. CIT(A) did not find merit in the submissions made by the assessee as above and confirmed the addition of Rs. 34,56,797/- made by the A.O. for the following reasons given in paragraph no 4.2 of his impugned order:

"I have considered the submission of the AR of the appellant in the backdrop of the assessment order. The matter at hand is to decide as to whether the appellant had made any concealment of its income with regard to the remittances received by it in foreign currency as imputed by the A.O. in his assessment order. I find that the A.O. has dealt with all the points raised by the assessee in course of assessment proceedings and then finally concluded that the appellant has under-reported its income by suppressing gross amount received from Sudamin by a sum of Rs.

34,56,797/- during the relevant assessment year. I find that the contention of the AR that the A.O. has made addition solely on the basis of FIRC certificate is incorrect. I find that the A.O. has examined the explanations with respect to details furnished by the appellant in course of assessment proceedings and then given his finding. I further find that the claim of the appellant before the A.O. that the excess sum was subsequently adjusted by way of credit note is unsubstantiated and as far as this AY is concerned the AR of the appellant has neither controverted the findings of the A.O. nor has explained its claim in the matter with any material. I also find that if a credit note has been issued in a subsequent year, the claim of the A.O. is substantiated that there was under reporting of income by the appellant. The claim of credit note being issued and adjustment made with other invoices of the party is just an afterthought and held to be not reliable. Therefore, I uphold the action of A.O. in making the addition of Rs. 34,56,797/- as income of the appellant for year under consideration.”

Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

5. We have heard the arguments of both the sides and also perused the relevant material on record. As alleged by the A.O. in the assessment order, there were 3 excess amounts of US\$ 15565.95, 1971.9 and 55699.38 received by the assessee which represented its concealed consultancy fees. As regards the first excess amount of Rs. US\$ 15565.95 received by the assessee, the learned counsel for the assessee has submitted that the total amount of US\$ 60848.24 was actually received by the assessee against Invoice No. 3, 5 & 6 but in the relevant FIRCs issued by the bank, reference was made only to Invoice No. 3 & 5. He has invited our attention to the copy Invoice No.6 placed at page no 32 of the Paper Book to show that the excess amount of US\$ 15565.95 as pointed out by the A.O. was actually received against invoice no. 6 and since the said invoice was duly

accounted for by the assessee, there was no concealment of any income from consultancy fees. He has submitted that similarly the amount of US\$ 81025.13 was received by the assessee against Invoice No. 9, 10, 11 and 12 but in the relevant FIRCs, a reference was wrongly made by the bank only to the invoice no 9 and 10. He has invited our attention to the copies of invoice no 11 and 12 placed at Paper Book No. 34 and 36 to point out that the said invoices raised during the year under consideration on 25th March, 2003 were duly accounted for by the assessee company. He has contended that the remaining amount of US\$ 1971.9 was actually paid by the concerned foreign company in excess and after realising this mistake, the same was duly adjusted by the said company in the next year while settling the invoice dated 23.05.2003 raised by the assessee. He has contended that the excess payments thus did not represent any consultancy fees that had been concealed by the assessee as alleged by the authorities below and the addition made on this issue is liable to be deleted.

6. Keeping in view the relevant documentary evidence placed by the learned counsel for the assessee on record, which fully supports his submission, as regards the alleged excess amounts received by the assessee, we are inclined to accept the same. Even the learned DR has not been able to point out any discrepancy or deficiency in the submissions made by the learned counsel for the assessee which are duly supported by the relevant documentary evidence. He however has contended that this matter requires verification and A.O. may be allowed an opportunity to verify the same. We are unable to accept this contention of the learned DR. It is observed that the explanation

now offered on behalf of the assessee before the Tribunal was offered by the assessee even during the course of assessment proceedings, but the Assessing Officer could not appreciate the same and proceeded to treat the excess receipts as concealed consultancy fees of the assessee without properly verifying the explanation of the assessee from the relevant documentary evidence. Similarly, the Ld. CIT(A) also failed to appreciate the submissions of the assessee as regards the alleged excess receipts in the right perspective and proceeded to confirm the addition made by the A.O. by treating the said receipts as concealed consideration fees of the assessee on irrelevant consultancy. Keeping in view all these facts of the case, we are of the view that the revenue cannot be given the second innings especially when a period of more than 15 years has already lapsed and the fault for the same does not lie with the assessee. We accordingly delete the addition of Rs. 34,56,797/- made by the A.O. and confirmed by the Ld. CIT(A) and allow this appeal of the assessee.

7. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 31st August, 2018.

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

Sd/-
(P.M. Jagtap)
ACCOUNTANT MEMBER

Dated: 31/08/2018

Biswajit, Sr. PS

Copy of order forwarded to:

1. Rawmet Commodities Pvt. Ltd., 40/7, Ballygunge Circular Road, Kolkata – 700 019.
2. D.C.I.T. CIR – 12(1), Kolkata .

3. The CIT(A)

4. The CIT

5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata