

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

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**ITA No. 161/VIZ/2017
(Asst. Year: 2012-13)**

M/s. Steel City Securities, vs. ACIT, Circle-4(1),
D.No. 49-52-5/4, Sri Kanya Visakhapatnam.
Towers, Shantipuram,
Visakhapatnam.

PAN No. AA ECS 0970 L
(Appellant)

(Respondent)

Assessee by : Shri G.V.N. Hari-Advocate.
Department By : Smt. Suman Malik – Sr.DR

Date of hearing : 25/10/2018.
Date of pronouncement : 14/11/2018.

ORDER

PER D.S. SUNDER SINGH, ACCOUNTANT MEMBER

This appeal by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-2, Visakhapatnam, dated 27/02/2017 for the Assessment Year 2012-13.

2. All the grounds of appeal are relating to the disallowance of stamp duty charges collected by the assessee and incurred as expenditure.

3. In this case, a survey under section 133A of the Income Tax Act, 1961 (hereinafter referred to as 'Act') was conducted in the business premises of the assessee on 19/02/2015. During the course of survey, it was found by the Assessing Officer that the assessee has collected the stamp duty from its clients against purchase / sale of shares and securities, but not remitted to the Government account. The assessee was asked to explain as to why the stamp duty collected, but not paid to the Government account, should not be treated as revenue receipt in the hands of the assessee. In response to the notice, the assessee furnished explanation on 19/03/2015 stating as under:-

"During the Financial Year 2011-12, we have collected an amount of Rs.72,06,514/- towards stamp duty from the clients. Out the above an amount of Rs.67,06,906/- was paid towards purchase of stamps during the Financial Year 2011-12. These payment includes an amount of Rs.39,05,000/- paid by way of cash. The following is summary of stamp duty collection account in our books of account for the Financial Year 2011-12.

Sl.No	Description	Amount
01	Opening Balance as on 01/04/2011	3,81,262
02	Add: Collection towards stamp duty form the clients during the F.Y.2011-12	72,06,514
03	Total	75,87,776
04	Less: a) purchase of stamps - paid in cheques b) Purchase of stamps - Paid in cash	31,83,168 39,05,000
05	Closing Balance as at 31/03/2012	4,99,608

We purchase broker note stamps to be affixed on the original contract notes to be given to the clients which is a pre-requisite as per the Indian Stamp Act. We purchase broker note stamps through the liaisoning agents who in turn purchase the same from stamp vendors at Mumbai. We pay to these liaisoning

agents for the procurement of stamps. Since these stamp vendors were situated at Mumbai and there is no procedure to give bills/invoices by the stamp vendors for purchase of broker note stamps, all these payment were supported by self made vouchers. The amount collected from the clients towards purchase of broker note stamps is parked under the Stamp Duty account and same is grouped under the current liabilities in the balance sheet of the respective Financial Years. Whenever we purchase stamps, we debit the stamp duty account to the tune of stamps purchased. We have never claimed as expenditure of these payments and we have not debited these payments to the profit & loss account of the respective financial years.

We request your good self to kindly take the above said information into consideration and do the needful in this regard."

The Assessing Officer examined the explanation offered by the assessee and not satisfied with the same. The AO recorded the statements of some employees and the directors at the time of survey and found some inconsistencies in the statements recorded from the concerned persons under section 131 & 133A of the Act and the gist of which are as under:-

- i) The assessee has purchased the stamps in cash in the range of Rs. 50,000/- to 75,000/- in a day and self-made vouchers have been made in the names of two employees viz., Sri P.V. Kaliprasad and Sri K. Ganesh showing payment of cash to them for purchase of stamps. The Managing Director of the company has passed the said vouchers.
- ii) A statement was recorded from one of the Directors Sri Satish Kumar Arya, who is working in the company since 1996 and looking-after day to day trading

activity, who has categorically stated in his statement dated 19/02/2015 that the company does not purchase any stamps in cash.

- iii) Another Director of the company Sri K. Satyanarayana has also stated in his statement dated 19/02/2015 that the company has not been purchasing any stamps in cash since last 10 years.
- iv) Sri N. Ramu, Chief Finance Officer of the company, who was working in the company since 2005, stated that he has entered the expenditure towards stamps purchase in the accounts based on self-made vouchers as it was passed by the MD, but he was not aware about the purchase of stamps in cash.
- v) Although, the employees to whom payments were shown in the vouchers have deposed in their statements recorded under section 131 that they were given cash to purchase stamps, they could not tell from whom they purchased the same. They only gave vague reply that they purchased the said stamps from various parties near Railway Station or near Sub-Registrar Office.
- vi) Sri G. Sreerama Murthy, who is the Managing Director of the company, in his statement recorded under section 131 on 23/02/2015, stated that the said stamps were not available in Visakhapatnam and therefore, those were purchased from stamp vendors in Mumbai, and the stamps were sent by the liaison agents of the company by courier and sometimes in

person. However, he could not tell the details of any liaison agent.

- vii) The Managing Director in his statement dated 11/03/2015 admitted that they have no evidence with them to substantiate the purchase of brokerage stamps in cash.

4. Therefore, the Assessing Officer was of the view that the claim of purchase of brokerage stamps in cash is bogus, as it is not supported by any evidence. Therefore, he made the addition of Rs. 40,23,346/-, relating to the amount paid for purchase of stamps in cash.

The assessee has argued before the AO that it has collected the stamp duty charges from its customers in fiduciary capacity and accounted under the current liabilities and did not claim or debit the expenditure to the P & L account, thus question of disallowance does not arise. The Assessing Officer relied on the decision of the Hon'ble Gujarat High Court in the case of *CIT Vs. Ideal Sheet Metal Stamping & Pressing (P) Ltd.*, [(2007) 290 ITR 295] and also the decision of the Bombay High Court in the case of *CIT Vs. Bassein Metals (P) Ltd.* [(2003) 263 ITR 518] and held that charges for collection towards stamp duties are treated as revenue receipt.

- 5.** Aggrieved by the order of the Assessing Officer, assessee went on appeal to the Id. CIT(A), who confirmed the addition made by the Assessing Officer holding that there was no evidence for purchase of stamps in cash and the assessee failed to bring any evidence to establish that there was non-availability of stamps in the State of Andhra Pradesh. In spite of giving several opportunities, assessee failed to produce any evidence, therefore, Id. CIT(A) held that Assessing Officer is justified in making the addition. He also considered the argument of the assessee that the said amount was received in fiduciary capacity for purchase of shares and not to be treated as income and observed that the stamp duty is a part of trading as per the ratio laid down by the Hon'ble Supreme Court in the case of *M/s. Chowringhee Sales Bureau (P) Ltd. vs C.I.T.* [(1973) 87 ITR 542]. The failure of the assessee to account it, as part of its trading receipts in its profit & loss account would not in any way alter the nature and characteristic of such receipts as part of trading receipt. Accordingly, held that stamp duty collected by the assessee is a revenue receipt and required to be assessed to tax in its hands.
- 6.** Against the order of the Id. CIT(A), the assessee carried the matter to the tribunal. During the appeal hearing, Id. counsel for the assessee has submitted that the assessee is stock broker

having offices throughout the country. The assessee has to issue contract notes for purchase / sale of shares to its customers and it should be affixed by required amount of stamps on the contract note. Unless the contract note is affixed by the required amount of stamps the same is invalid. The assessee has to purchase the stamps as per the requirement on day to day basis and the cost of which borne by the customer. As per the requirement, the assessee had purchased the stamps from the Government of A.P. as well as from the local stamp vendors in Mumbai. As per the SEBI guidelines, it is a mandatory to issue contract note at the end of the day, to each and every client for all the transactions of buying / selling of securities in a particular day and this contract note should be given separately for each stock exchange like BSE & NSE. Each contract note is invariably affixed with a broker note stamp of requisite value. Without proper broker note stamp, the contract note is invalid. The assessee is collecting the requisite stamp duty amount from the clients at the time of issue of contract note to the customers. The mode of payment for purchase of broker note stamps is immaterial, as there is a statutory obligation on the part of the broker to affix proper value of broker note stamps on every contract note given to the client. The assessee has purchased the broker note stamps partly by way

of cash through the liaisoning agents, who in turn, purchase the same from the stamp vendors at Mumbai and pay to the liaisoning agents for the procurement of stamps. There is no procedure to give bills/invoices by the stamp vendors for purchase of broker note stamps and all these payments were made in cash. Therefore, argued that it is incorrect on the part of the Assessing Officer to treat the cash payments for purchase of broker note stamps, as no payment made to the Government account. There is a statutory obligation to affix proper broker note stamps on each and every contract note given to the client and the same is subject to inspection by SEBI.

The Ld. Counsel for the assessee has made a second proposition that the assessee had collected the stamp duty in a fiduciary capacity to accommodate purchase / sale transactions and affixed the stamps. Since, for every purchase and sale transaction the stamps are required to be affixed, the stamp duty is collected in a fiduciary capacity therefore, the said amount cannot be treated as an income. The Ld.A.R also submitted that the Payment for stamps were routed through the liability account and never claimed the same as expenditure. Therefore, argued that the amounts collected on behalf of the purchaser / seller should not be treated as an income since it is a contingent in

nature. The Id. counsel further argued that the amount collected by the assessee on account of stamp duty was neither shown as income nor shown as an expenditure, therefore, the question of disallowance of expenditure does not arise and taxing the same as revenue receipt is incorrect. The Id. counsel for the assessee has distinguished the case laws relied upon by the Assessing Officer as well as the Id. CIT(A). He argued that in the case of *M/s. Chowringhee Sales Bureau (P) Ltd.*, (*supra*), the Hon'ble Supreme Court considered the issue of sales tax collected by the assessee and in the case of *Ideal Sheet Metal Stamping & Pressing (P) Ltd.*, the issue is with regard to excise duty collected by the assessee. Similarly, the case of *Bassein Metals (P) Ltd.* is also related to the sales tax collected by the assessee. The Id.counsel has relied on the letter of Central Board of Excise & Customs in F.No. 187-107-2010-CX.4, dated 17/09/2010, wherein CBEC clarified that stamp duty and security transaction tax are the liability of the buyer/seller of securities and the broker pays the same acting as a Pure Agent, the said amount is not includible in the taxable amount in terms of Rule 5(2) of the Service Tax (Department of Value) Rules, 2006. Therefore, argued that stamp duty collected by the broker in fiduciary capacity cannot be treated as income and the question of disallowance of expenditure does not arise.

7. *Per contra*, the Ld. Departmental Representative argued that the assessee has collected the stamp duty charges for issue of contract note from the assessees. As and when stamps are affixed and used, the same is reduced from the stamp duty account from the amount collected as stamp duty from the customers and the same is required to be considered as revenue receipt and stamps affixed required to be treated as expenditure incurred by the assessee, thus the collections made by the assessee towards stamp duty constitutes as income the stamps that are utilised by the assessee partakes the character of expenditure. Therefore, argument of the assessee not to treat the collection of stamp duty as income is not acceptable and the Id.CIT(A) has rightly held that same is revenue receipt. There is no mistake in placing reliance on the decision of the Hon'ble Supreme Court in the case of *M/s. Chowringhee Sales Bureau (P) Ltd., (supra)* by the Id. CIT(A), since the collection of amount for stamp duty is also a trading receipt. In respect of liability of expenditure, the Id. Departmental Representative argued that the Assessing Officer has allowed the expenditure which was incurred and paid to the Government of Andhra Pradesh and disallowed the expenditure which was incurred in cash on self-made vouchers. The assessee failed to furnish the details of stamp vendors i.e.

names and addresses of the stamp vendors, in spite of giving several opportunities and failed to furnish the evidence in support of its claim. Accordingly, argued that the Assessing Officer has rightly disallowed the expenditure of Rs. 40,23,346/- representing the stamp duty collected, but not paid to the Government account. Therefore, argued that no interference is called for in the order of the Id. CIT(A) and the same is required to be upheld.

8. We have heard both the parties and perused the material placed on record. The assessee is a stock broker having its offices throughout the country, which is undisputed fact. The assessee has to affix the stamps on the contract notes for purchase and sales of shares as per Indian Stamp Act, 1899. If there is a delay in affixing, it attracts penalty as per the SEBI guidelines and every contract note required to be properly stamped. A survey operation under section 133A was conducted in the business premises of the assessee and no evidence was found to establish non-purchase of stamps or inflation of expenditure on account of stamps purchased by the assessee. The assessee stated that a sum of Rs.31,83,168/- was incurred for purchase of stamps, which was paid in cheque and the same was allowed. He further submitted that the stamps worth of Rs.39,05,000/- was purchased in cash and the said amount was disallowed. The reason for purchase of

stamps in cash was non-availability of stamps with the respective Governments. The Id. CIT(A) observed that the assessee could not furnish any evidence to show that the non-availability of stamps in the State of Andhra Pradesh, whereas the Id. counsel for the assessee has submitted that the assessee is having offices all over India and the stamps purchased from Government of A.P. are valid for the transactions entered into in the State of Andhra Pradesh and for transactions in Mumbai, the stamps required to be purchased from Maharashtra. In the case of other parts of the country, the stamps required to be purchased from the respective states. The assessee further stated that assessee is having branch at Mumbai, for which stamps purchased from Maharashtra Government is required to be affixed. The assessee purchased the stamps in cash from liasioning agents, stamp vendors and accounted the same in the books of account as liability and the account copy of the ledger for the stamp duty was enclosed in page No. 77 to 120 of the paper book. As per the ledger account of the stamp duty, the assessee in accounting the stamps from his stamps account. As and when, the stamps are purchased, the account is debited and as and when stamps are utilised for each settlement, the same is credited to the account. The assessee has accounted the entire utilization of the stamp duty settlement-wise.

The Assessing Officer has verified the ledger account copy, but did not find any irregularity. Though two Directors have stated that there was no purchase of stamps, the employees from whom the statements were recorded have confirmed that stamps were purchased. The Managing Director of the company has stated that both the Directors are not looking after purchase of stamps, therefore, they were not aware of the factual background. It is undisputed fact that the assessee has to affix the stamps on every transaction and it is also a fact that the assessee is operating throughout the country and the stamps purchased from the Government of Andhra Pradesh are valid only for the transactions in the state. It is also mentioned in the rules of Indian Stamps Act that whenever stamp duty payable under the Act in respect of any instrument could not be paid exactly by reason of the fact that the necessary stamps are not in circulation, the amount by which the payment of duty shall on that account be in defect and shall be made up by affixing of 10 paise and 05 paise adhesive stamps, as described in Rule 16, provided that the Government may direct that instead of such stamps, adhesive court fee stamps shall be used for the purpose.

9. From the above, it is evident whenever there is a shortage of stamps or non-supply of stamps, the assessee is permitted to

purchase adhesive stamps or non-judicial stamps or judicial stamps to meet the requirements. The stamp vendors are located in various places and do sell the stamps. The stamps including adhesive stamps and non-judicial stamps are sold either in the premises of Courts or in the premises of Taluks or in the office premises of Sub-Registrar office. The stamp vendor collects the cash and delivers the exact amount of stamps required by the customer but the does not issue the receipts. Similar practice is followed by the post offices for selling postage stamps and it is impossible to identify the issuing post office. In the instant case, the assessee has purchased the stamps in cash from the stamp vendors and liasioning agents and through the Government. The said sum was paid by cheque for purchases from Government and whatever stamps purchased from the vendors across the country, the same is paid in cash. The assessee also accounted the stamps in detail settlement-wise in the ledger account. The Assessing Officer did not find any defect in the account of the stamp duty having conducted the survey in the business premises of the assessee. Though the details are available settlement wise, no enquiry was conducted to verify whether the assessee has affixed the requisite stamps or not? The Assessing Officer also did not have any evidence to establish that the purchase of stamps was

bogus. Merely on the basis of non-furnishing of the details of the vendors, the addition cannot be made especially in the case of purchase of stamps. The consumption of stamps required to be considered on the basis of volume of business and the consumption account. The Assessing Officer did not dispute the fact that there is requirement of affixing the stamps on every contract note, there was no evidence brought on record to show that affixing of stamps in settlement wise as accounted in the ledger account copy is false or overstated. In the earlier years also, the assessee has followed the same practice but the department has not brought on record any evidence to show that department has suspected the payment. The department has not disputed the settlements accounted by the assessee in the ledger account. Once the department accepts the settlements and mandatory requirement of affixing the stamps there is no reason to suspect the expenses incurred by the assessee towards stamp duty merely on the basis of surmises and conjunctures of the Assessing Officer without bringing any evidence to show that the stamps account is incorrect. The Assessing Officer should have verified the daily transactions on simple basis settlement-wise and given a finding whether assessee is really incurred such expenditure for affixing of stamps. This exercise was not done by

the Assessing Officer. Therefore, we hold that disallowance of expenditure claimed by the assessee on account of stamp duty is unsustainable and the same is deleted. Accordingly, we set aside the order of the Id. CIT(A) and delete the addition and allow the appeal of the assessee.

10. The next proposition made by the Id. counsel for the assessee was that stamp duty collected from the customers is in a fiduciary capacity which should not be treated as income. Since we have set aside the order of the Ld.CIT(A) and deleted the addition on merits, this issue is more of academic and has no impact on the addition. It is a fact that assessee is collecting stamp duty from the customers for the purpose of affixing the stamps. It is an obligation of the assessee to affix the stamps on every contract note, therefore, it cannot be held that assessee has purchased stamps in fiduciary capacity, thus, it constitutes the revenue receipt. The expenditure incurred towards stamp duty, partakes the character of the revenue expenditure and the amount collected by the assessee is revenue receipt. Therefore, we hold that the Id. CIT(A) has rightly held as revenue receipt and we decline to interfere on this issue and uphold the order of the Id. CIT(A).

11. In the result, the appeal filed by the assessee is allowed.

Order Pronounced in open Court on this 14th day of Nov., 2018.

Sd/-
(V. DURGA RAO)
Judicial Member

sd/-
(D.S. SUNDER SINGH)
Accountant Member

Dated : 14th November, 2018.

vr/-

Copy to:

1. *The Assessee – M/s. Steel City Securities, D.No. 49-52-5/4, Sri Kanya Towers, Shantipuram, Visakhapatnam.*
2. *The Revenue – ACIT, Circle-4(1), Visakhapatnam.*
3. *The CIT-2, Visakhapatnam.*
4. *The CIT(A)-2, Visakhapatnam.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Visakhapatnam.