

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI CHANDRA POOJARI, AM & GEORGE GEORGE K., JM

I.T.A. Nos.135 to 138/Coch/2018
Assessment Years : 2011-12 to 2014-15

The Deputy Commissioner of Income-tax, Circle-1, Kochi.	Vs.	M/s. Prince TMT Steels (P) Ltd., 6/439, Anappuramkadu, Kinassery P.O., Palakkad-678 707. [PAN: AADCP 5210D]
(Revenue-Appellant)		(Assessee-Respondent)

C.O. Nos. 29 to 32/Coch/2018 (Arsg. out of I.T.A. Nos.135 to 139/Coch/2018)
Assessment Years : 2011-12 to 2014-15

M/s. Prince TMT Steels (P) Ltd., 6/439, Anappuramkadu, Kinassery P.O., Palakkad-678 707. [PAN: AADCP 5210D]	Vs.	The Deputy Commissioner of Income-tax, Circle-1, Kochi.
(Assessee-Appellant)		(Revenue-Respondent)

Revenue by	Shri Alok Mitra, CIT(DR)
Assessee by	Shri C.B.M. Warriar, CA

Date of hearing	11/03/2019
Date of pronouncement	11/03/2019

ORDER

Per CHANDRA POOJARI, AM:

These appeals filed by the Revenue and the Cross Objections filed by the assessee are directed against the common order of the CIT(A)-III, Kochi dated 17/01/2018 and pertain to the assessment years 2011-12 to 2014-15.

2. The Revenue has raised the following grounds of appeal:

1) The Commissioner of Income Tax (Appeals) erred in determining concealed profit @ just 8% of the concealed turnover.

2) The Commissioner of Income Tax(Appeals) has not appreciated that suppression of income is not just on account of trade suppression (in which case profit % would be lower) but also on account of concealed manufacturing.

3) The Commissioner of Income Tax(Appeals) overlooked that Prince TMT Steels (P) Ltd and Prince Ingots(P) Ltd and Prince Rolling (P) Ltd (all three being sister concerns) worked in close association. This association is clearly established by seized material marked CHN / 13-14/11/BMV/A 1 to 7, 15 to 17 and 21.

4) The Commissioner of Income Tax(Appeals) has not appreciated that the actual gross profit of the business could be worked out by taking the combined opening and closing stock of raw materials and finished goods of the three companies coming in the manufacturing line, the purchase of raw materials and sale of finished goods by the three companies except purchase of steel ingots from PAPL and PRPL by PTSL and closing stock of the manufactured goods of the three companies have to be taken together.

5) The Commissioner of Income Tax(Appeals) has overlooked that in assessment order for each of the years, the method of arriving at GP is clearly worked out. In contrast the method adopted by the CIT(A) is arbitrary and lacks logic.

3. The assessee has raised the following grounds in its Cross Objections:

1.The order of the CIT(A) in not considering the plea of the appellant in its entirety was most inappropriate.

2. The CIT(A) ought to have appreciated the fact that the gross profit that was realizable by the appellant was only to the tune of 4 to 5% of the turnover which was rightly offered in the return filed. The fact that the appellant had also dealt with trading transactions was lost sight while passing the order in the appeal filed by the appellant.

3. The argument of the department that the gross profit that was worked out by taking combined details of all the three companies involved in the line of business is devoid of any merit and is against the facts and circumstances of the case.

4. The Commissioner of Income tax (Appeals) ought to have considered that the methodology- that was adopted by the learned assessing authority to arrive at the gross profit, suffered from serious mistakes which was clearly narrated during the course of appeal proceedings. Once the correct figures were adopted the actual gross profit that could have been earned by the appellant would have been at a very lesser margin than what is directed to be adopted in the order of the first appellate authority.

4. The facts of the case are that assessee claimed the unaccounted sale in its turnover as trading transactions, i.e., items brought from outside and sold both unaccounted which was not accepted by the Assessing Officer. The Assessing Officer noticed that the seized material identified as CHN/13-14/11/BMV-A(7) and VSV/B-(18) from the premises of the assessee evidenced that the turnover was out of manufacturing activity only. Hence, the Assessing Officer was of the view that the GP rate cannot be applied on these transactions at 2% as claimed by the assessee. The Assessing Officer calculated the GP rate as follows:

Manufacturing P&L account			
<u>Opening Stock</u>		<u>Sales</u>	
Raw material + finished goods	364614300	(Manufacturing Goods)	162,83,77,805
Purchase			
Used for manufacturing	1273062827		
(ingots, furnace oil, stores & spares		<u>Closing Stock</u>	42,37,27,731
		(Manufacturing stock)	
Gross profit	<u>41,44,28,409</u>		
	<u>2,05,21,05,536</u>		2,05,21,05,536

4.1 According to the Assessing Officer, the above figures comprised of production details of M/s. Prince Alloys Pvt. Ltd. and M/s. Prince Rolling Pvt. Ltd. and of the assessee combined and worked out the GP as follows:

$$\frac{414428409}{1628377805} = \begin{matrix} 25.45\% \\ \text{Roughly } 25\% \end{matrix}$$

4.2 The Assessing Officer included the savings on account of VAT and Excise duty on this sales for computation of the assessee's income. The Assessing Officer accepted the contention of the assessee that the sale value include VAT and excise duty components while working GP rate and inclusion of VAT and excise duty on the same is double taxation. The Assessing Officer found that Material No. 8 of CHN/13-14/11/BMV/A related to the proceedings in connection with the central excise department's search on the assessee on 02/02/2011, wherein non excise goods of the assessee were found in the possession of the dealers of the assessee. an amount of Rs.77 lakhs was levied on the assessee and an equal sum was levied as penalty. According to the Assessing Officer, the dealers had also admitted the possession of unexcised and unbilled items of the assessee with them and though they retracted later, it was not credible that around 15 deals had given admissions on coercion.

4.3 According to the Assessing Officer, the basic value of TMT steels was Rs.36670125/- and accordingly, included this value for the computation of unaccounted production of the assessee for the relevant assessment year. The Assessing Officer considered the request of the assessee to exclude VAT and Central

excise duty on the unaccounted sale. The assessee requested that since the assessee had admitted additional income on unaccounted trading turnover at 2%, the same may be set off which was accepted by the Assessing Officer. Considering the above facts, the Assessing Officer estimated the income of the assessee at 25% of the GP rate. Thereafter, the Assessing Officer added savings on excise duty and savings on VAT and deducted the additional income already admitted by the assessee and arrived at the gross income of the assessee.

5. Against this, the assessee went in appeal before the CIT(A). The CIT(A) observed that the assessee was not able to produce any evidence in support of the claim that suppressed turnover was relating to trading sales and not manufacturing sales and the assessee was mainly a manufacturer who purchased steel ingots and manufactured TMT steel bars out of them. In view of these facts, the CIT(A) dismissed the ground relating to this issue.

5.1 The CIT(A) found that the Assessing Officer had separately added VAT and excise duty while calculating total income on notional savings. The assessee was having unaccounted sales and on such unaccounted sales, the assessee was not paying any excise duty or VAT. According to the CIT(A), during the search at the premises of the assessee, no documents were found which indicated that the assessee earned anything on account of savings of excise duty and VAT. Therefore, the CIT(A) directed the Assessing Officer to delete the addition made on account of savings from non payment of excise duty and VAT.

5.2 Regarding application of gross profit rate at 25% of the suppressed turnover, the CIT(A) found from the working given by the assessee that the Assessing Officer had inadvertently omitted to consider direct expenses incurred in manufacturing unaccounted steel TMT bars. Before the CIT(A), the assessee submitted that the correct amount of GP was 3.69% and the same is to be adopted instead of 25% applied by the Assessing Officer. The CIT(A) was of the opinion that GP of 25% was excessive. According to the CIT(A), during the course of search, the assessee had offered GP at 2% on unaccounted sales which was lower than assessee's own calculation of 3.69%. Considering that complete details cannot be found in the cases of unaccounted, out of book sales, the CIT(A) made a fair and reasonable estimate of gross profit earned by the assessee. Therefore, on presumptive basis, the CIT(A) estimated the GP rate at 8% of the suppressed turnover.

6. Against this, both the Revenue as well as the assessee is in appeal before us. The Ld. DR submitted that the CIT(A) estimated the GP at 8% and thereby given relief to the assessee which is incorrect.

7. On the other hand, the Ld. AR submitted that working of the GP rate is itself wrong and the Assessing Officer clubbed the results of the three companies, namely Prince TMT Steels (P) Ltd., Prince Alloys Ltd. and Prince Rolling Pvt. Ltd. According to him, only the results of the assessee is to be considered and while working out the GP, he has to consider the direct expenses like power and fuel, production

charges, repairs and maintenance of machinery and depreciation on productive assets. Otherwise, it would give a distorted picture of the assessee.

8. We have heard the rival submissions and perused the record. In our opinion, all the direct expenses are to be considered except depreciation on productive assets which should be charged to the P&L account and not to the manufacture and trading account. To that extent, we agree with the arguments of the Ld. AR. Accordingly, the Assessing Officer is to take into consideration the opening stock, closing stock, purchase and sales of the assessee only and should not club these items belonging to other assesses while arriving at the G.P. rate of the assessee. With these observations, we remit this issue to the file of the Assessing Officer to arrive at the current GP rate and thereafter determine the income of the assessee. However, other findings of the CIT(A) are confirmed. Hence, this ground of appeals of the Revenue is partly allowed for statistical purposes.

9. Since we have disposed of the appeals of the Revenue by remitting the issue to the file of the Assessing Officer for fresh consideration, the Cross Objections filed by the assessee are also remitted to the file of the Assessing Officer for fresh consideration in the light of our findings in Revenue's appeals.

10. In the result, both the appeals of the Revenue as well as the cross objections filed by the assessee are partly allowed for statistical purposes.

Order pronounced in the open Court on this 11th March, 2019

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Place: Kochi

Dated: 11th March, 2019

GJ

Copy to:

1. M/s. Prince TMT Steels (P) Ltd., 6/439, Anappuramkadu, Kinassery P.O., Palakkad-678 707.
2. The Deputy Commissioner of Income-tax, Central Circle, Kochi.
3. The Commissioner of Income-tax(Appeals)-III, Kochi.
4. The Commissioner of Income-tax (Central), Kochi.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin

I.T.A. Nos. 135-138/Coch/2018 &
C.O. Nos. 29-32/Coch/2018