

IN THE INCOME TAX APPELLATE TRIBUNAL
RANCHI BENCH, RANCHI
(Before Shri S. S. Godara, J.M. & Dr.A.L.Saini, A.M.)

ITA No. 26/Ran/16 : Asstt. Year : 2010-11

D.C.I.T, Cir-1, JSR	Vs	M/s. Hard Rock Fabrication P.Ltd. PAN: AABCM4537C
(APPELLANT)		(RESPONDENT)

Appellant/department by : Shri Inderjit Singh, CIT, ld. DR
Respondent/assessee by : None appeared

Date of Hearing : 10-01-2019	Date of Pronouncement: 22-02-2019
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ORDER

PER BENCH:

The captioned appeal filed by the revenue, pertaining to assessment year 2010-11, is directed against the order passed by the Commissioner of Income-tax (Appeals), Jamshedpur in Appeal No. 59/JSR/2013-14, dated 28-10-2015, which in turn arises out of an assessment order dated 22-03-2013 passed by the Assessing Officer u/s. 143(3) of the Income-Tax Act, 1961 (in short, the Act).

2. The grievances raised by the revenue are as follows:-

i) First ground of appeal is that the ld.CIT(Appeals), Jamshedpur has erred in deleting the addition of Rs.5,556/- made on account "Interest on current Account deposits".

ii) Second grounds of appeal is that the ld. CIT(Appeals), Jamshedpur has erred in deleting the addition of Rs.4,67,98,561/- made by the AO on account of 'difference' ignoring the detailed analytical

justification given in the assessment order as well as in the remand report.

iii) Third grounds of appeal is that the ld. CIT(Appeals), Jamshedpur has erred in law and upon facts of the case in directing the AO to modify interest u/s. 234B of the Income Tax Act, 1961 following the decision of Shri Ajay Prakash Verma in T.A No. 38 of 2010 reported in 2013(1) TMI 140 which direct to charge interest u/s. 234B of the Income Tax Act, 1961 on returned income. In fact, the department has already filed a review petition against the order passed referred as above before the Hon'ble High Court of Jharkhand.

3. At the time of hearing none appeared on behalf of assessee in spite of issuance of notice for hearing more than one occasions. The learned Departmental Representative (ld.DR) was present for the appellant revenue. In the absence of any appearance of the assessee, the appeal is being dispose of ex parte qua the assessee after hearing the ld. DR for the revenue on merits in terms of Rule 24 of ITAT Rules, 1963.

4. Ground no. 1 relates to deletion of addition of Rs.5,556/- by the ld. CIT(A).

5. The brief facts qua the assessee are that during the assessment proceedings the AO on perusal of Annexure ' D ' of Form number 3CD noted that an amount of Rs. 1961/- was paid as interest on TDS, which is to be disallowed. The assessee has not added this amount in the computation of income. The assessee has accepted its mistake in his letter dated 22-02-2013, Hence, an amount of Rs.1,961 was disallowed and added back to the total income of the assessee.

6. Aggrieved by the order of the ld.AO, the assessee carried the matter in appeal before the ld. CIT(A) , who deleted the said addition by observing as follow:-

“ 4.2 I have gone through the order of the ld. AO as well as the submission of the appellant. The AO in his order have stated that the assessee has accepted its mistake in his letter dated 22.02.2013. The appellant stated that the AO is not justified in making disallowance of Rs. 1961/- as he did not bring any material facts as to how it is an allowable deduction.

There are several decision in favour of revenue which are as under:-

- a. CIT vs. Ashoka Mills Ltd (1996) 218 ITR 526 Gujrat*
- b. CIT vs. Raipur Manufacturing Company Ltd 135 CTR 248 Gujrat*
- c. CIT vs. Saraspur Mills (1997) 226 ITR 533 Gujrat*
- d. Bharat Commerce Industries vs. CIT (1998) 230 ITR 733 (SC)*

Where it has been held that interest paid under any provision of the IT Act, W.T Act etc for late payment or short payment of advance tax, self assessment tax, TDS are not deductible expenses. Hence, deduction claimed of Rs. 1961/- made by the AO is hereby confirmed.

During the course of appellate proceeding it is stated that credit balance appearing in balance sheet represents balance in current account. The bank does not provide any interest on current account deposits, therefore the AO is not justified in making addition of Rs.5556/-. “

7. Aggrieved by the order of the ld. CIT(A), the revenue is in appeal before us.
8. The ld. DR has primarily reiterated his stand as taken by the AO. He relied on the order of the AO. He also submitted before us that the ld. CIT(A) has erred in deleting the impugned addition.
9. We have heard the ld. DR and perused the material available on record. We note that during the course of appellate proceeding it is stated that credit balance appearing in balance sheet represents balance in current account. The bank does not provide any interest on current account deposits, therefore the AO is not justified in making addition of Rs.5556/-. The CIT(A) was justified in deleting the addition. Hence, we declined to interfere in the impugned order of the ld. CIT(A). His order on this issue is hereby upheld. Ground raised by the revenue is dismissed.

10. Ground no. 2 relates to deletion relating to difference in stock of Rs.4,67,98,561/- by the ld. CIT(A).

11. The brief facts qua the issue are that during the course of survey operation the survey team found physically stock of Rs.2,31,92,749/-. The stock register was not maintained by the assessee. As per books of accounts maintained on computer a trading account was recasted during the course of survey proceedings, which is reproduced hereunder:-

Opening stock	7,26,62,748/-	Sales	59,55,08,721/-
Purchase	42,81,14,722/-	Closing Stock	(-)4,07,18,611/-
G.P @ 9.07% taken as per A.Yr 2009-10	5,40,12,640/-		
Total	55,47,90,110/-		55,47,90,110/-

12. The AO asked the assessee to explain the stock difference. In response the assessee submitted the followings:-

“That on the date of survey i.e. 18.03.2010 the books of account were not up-to date and few purchase and sale entries for the March Month were passed subsequently. That in the Trading Account –re-casted and re-produce by your good office. It is observed that your honour has omitted to take into account the Direct expenses of Rs.1.90 crores and the Duties & Taxes of Rs.6.05 crores. That a fresh trading account for the period starting from the beginning of the relevant financial year till the date of survey is re-casted and re-produced below considering the up-to-date sale and purchase figure, taking into account the Direct expenses and Duties and Taxes as per the audited financial statement of financial year 2009-10. That the trading account of residuary period (i.e. 18/03/2010 to 31/03/2010) is also produced herein below for your kind reference.

Particulars	01/04/09 to 17/03/10	18/03/10 to 31/03/10	01/04/09 to 31/03/10	Particulars	01/04/09 to 17/03/10	18/03/10 to 31/03/10	01/04/09 to 31/03/10
Opening stock	7.27	7.85	7.27	Gross Sales	59.66	7.30	66.96
Purchases	45.07	5.73	51.00	Closing stock	7.85 (Balance)	9.39	9.39
Direct	1.90	0.16	2.06				

<i>Expenses</i>							
<i>Duties & Taxes</i>		1.86	7.91				
<i>Gross Profit (12.11%)</i>	7.22	0.89 (Balance figure)	8.11				
<i>Total</i>	67.51	16.69	76.35	<i>Total</i>	67.51	16.69	76.35

That upon perusal of above your honour shall find that there was a closing stock of Rs. 7.85 crores as at the end of the 17th March, 2010. During the survey operation the physical stock as on that date was recorded at 2.32 crores which is less than the stock as per books of accounts. Thus there is no non-disclosure or undervaluation of stock in the books of account. It may also be noted that the assessee company produces buckets frames, arms, books links etc, used in construction and mining heavy equipments, which do not have general market. These are manufactured and sold to specific customers to name TELECOM, BEML and its associated concerns which have specific demand for its product. Thus the value of the products manufactured by the assessee company is not exposed to open market.”

13. However, the AO rejected the contention & written submissions of the assessee and made the impugned addition.

14. Aggrieved by the stand so taken by the AO, the assessee preferred an appeal before the Id. CIT(A), who after taking into account the remand report of the AO, rebuttal to the remand report by the assessee and detailed calculation and computation of stock submitted by the assessee before him deleted the impugned addition by observing as under:-

“Based on above I found that the fact is correct and even the AO did not taken the facts stated by the assessee in consideration. I also found that the AOs insisting on profit @9.07 only and no other consideration is there. Had it been considered and profit is taken @ 9.07 by the AO, scenario would be as under as on the date of survey.

<i>Opening stock</i>	<i>Rs. 7,26,62,748/-</i>	<i>Sales</i>	<i>Rs. 59,55,08,721/-</i>
<i>Purchase</i>	<i>Rs. 42,81,14,722/-</i>	<i>Closing stock</i>	<i><u>Rs. 3,90,81,389/-</u></i>
<i>Direct expenses</i>	<i>Rs. 17,000,000/-</i>		
<i>Duties and taxes</i>	<i>Rs. 6,28,00,000/-</i>		

<u>G.P 9.07%</u>	<u>Rs. 5,40,12,640/-</u>
Total	Rs. 63,45,90,110/-	Rs.63,45,90,110/-

This against the stock found at Rs. 2,31,92,749/- is nearer to the stock found during the course of survey. But neither the method adopted by the AO at the time of survey nor mathematical calculation given above is full proof. The AO in his order is not accepting the GP rate declare @12.11% despite the fact that GP of assessee in previous years were as under:

2007-08	-	12.23
2008-09	-	6.79
2009-10	-	9.07
2010-11	-	12.11

From above it can be seen that GP varies from 6.79% to 12.23%. Therefore the GP declared by the assessee should have been accepted. Assessee contention get support from the additional submission made before the undersigned on which the AO has no objection, if considered as per his letter dated 31.07.2015 which is reproduced below:-

Remand reply:

2.1 That the new evidences (Page Nos. 4 to 302) which were presented by the assessee during the assessment proceeding, if substantiate the earlier explanations given by the assessee and constitutes documentary evidence could be admitted under Rule-46A of the IT Rules, 1962, considering the time constraints in preparing and arranging the evidences by the assessee during assessment.

2.2 That the addition on account of stock amounting to Rs. 4.67 Crores was based on the basis of negative stock computed in Trading Account re-casted with facts and supporting evidences available during assessment and stock found during the course of Survey.

2.3 That the duties and taxes of Rs.6.05 Crores were not considered in computing the Closing Stock because the assessee failed to bring any credible evidence to substantiate that the sales figure taken at the time of survey was inclusive of duties.

2.4 That the purchases made on or before the date of survey amounting to Rs. 2.26 Crores and direct expenses for the same period amounting to Rs. 0.19 Crores and sales for the same period amounting to Rs. 0.11 Crores were not considered because the assessee did not submit any documentary evidence in support of its claim of difference of amount from the print out taken during the course of Survey.

2.5 That the assessee's calculation of stock of Rs. 7.85 Crores in contravention to stock of Rs. 2.31 Crores recorded at the time of Survey was accepted in the assessment as the assessee failed to submit any specific supporting evidence for the difference in the stock.

2.6 That the other additions have been based on the facts and supporting evidences available during assessment.

Further, the appellant which has produced additional submission in the paper book-I also shows that the assessee used to take duties and taxes in his trading account.

Thus the assessee is correct to state that the excise duty and taxes should be included in purchases as in the case of deduct correct stock. Neither the revenue considered the duties and taxes at the time of survey operation nor at the time of assessment proceeding, I am of the view that inadvertently gross mistakes have been made by the AO while passing the order.

The assessee too has committed mistake that he used to claim duties and taxes not under purchases but separately under the head manufacturing and other expenses. But then this makes no difference as accounting standard has been followed and expenses have been claimed.

Considering the facts mentioned above and additional evidence i.e. stock register, paper book-2 page 173 to 302 produced before the undersigned, I did not find that the AO is correct to state that no stock register is maintained. The page no. 173 to 302 of the additional evidence is the stock register of the assessee for the period ending 31.03.2010.

Therefore, the addition made by the AO could not be substantiated by the AO as factual and correct. Hence addition of Rs. 4,67,98,561/- under the head difference in stock is hereby deleted. “

15. The ld. DR has primarily reiterated his stand as taken by the AO. He relied on the order of the AO. He also submitted before us that the ld. CIT(A) has erred in deleting the impugned addition.

16. We have heard the ld. DR and perused the material available on record. We note that the assessee before the AO/CIT-A submitted detailed written submission,

replies of remand report and detailed calculation of stock & Gross Profit rate. The Id. CIT(A) deleted the impugned addition after analyzing all the material as available before him. We further note that the stock as computed by the AO is not supported by any material. In fact, the stock computed by the AO by taking into account the profit rate @9.07% closing stock of Rs.3,91,81,389/-. During the course of survey neither the method adopted by the AO nor mathematical calculation given by the AO, was not supported by any evidence. The AO in his order did not accept the GP rate @12.11% declared by the assessee despite the fact that gross profit of the assessee in previous years was as under:-.

<i>2007-08</i>	-	<i>12.23</i>
<i>2008-09</i>	-	<i>6.79</i>
<i>2009-10</i>	-	<i>9.07</i>
<i>2010-11</i>	-	<i>12.11</i>

17. Average G.P rate of preceding four years (2007-08 to 2010-11), which is computed with the help of above data varies from 6.79% to 12.23%. Therefore, the G.P declared by the assessee should have been accepted. The assessee's contention and additional evidence as submitted by the assessee during the appellate proceedings were duly examined by the AO in remand proceedings. The remand report as submitted before the Id. CIT-A by the AO does not give any adverse findings against the assessee. The addition was made on account of stock difference, without any supporting evidence/documents. Even during the survey operation, the survey team has failed to co-relate with stock difference with any tangible material/evidence. We note that excise duty and taxes should be included in purchases and in the case of sales to reduce the current stock. Neither the revenue considered the duty and taxes at the time of survey operation nor at the time of assessment proceedings. Therefore, inadvertently gross mistakes has been made by

the AO while passing the order. Therefore, considering the factual position and additional evidence as submitted by the assessee during the appellate proceedings, we note that the AO was not correct to state that the stock register was not maintained by the assessee. We also note that the additional evidence submitted by the assessee vide pages 173-302 (paper book-2) during the appellate proceedings, which is the stock register of assessee for the period ending 31-03-2010. Therefore, we do not find any infirmity in the impugned order of the Id. CIT(A). His order on this issue is hereby upheld. Ground no. 2 raised by the revenue is dismissed.

18. Ground no.3 relates to charging of interest u/s. 234B of the Act.

19. We note that this issue is covered by the judgment of the Hon'ble Jurisdictional High Court of Jharkhand in the case of Shri Ajay Prakash Verma in T.A No. 38 of 2010 reported in (013)(1) TM1 140, which directs the AO to charge interest u/s. 234B of the Act only on returned income and not on the assessed income. Respectfully following the above, we direct the AO to do so. Ground no. 3 of the revenue is dismissed.

20. In the result, the appeal filed by the revenue is dismissed.

Order Pronounced in the Open Court on 22 -02-2019

Sd/-

(S. S. Godara)
Judicial Member

Sd/-

(Dr. A.L.Saini)
Accountant Member

Dated: 22 -02-2019

*PRADIP (Sr.PS)

Copy of the order forwarded to:

1. The Appellant/Department: DCIT, Cir-1, 47, C.H Area, JSR-831 001.
2. The Respondent/Assessee:M/s. Hard Rock Fabrication (P) Ltd, No.A-33/34P, Phase-6, Gamharia, JSR-832108.
3. The CIT-,
4. The CIT(A)-,
5. DR, Ranchi Benches, Ranchi

True Copy, By order,

Senior P.S
ITAT, Ranchi Benches