

IN THE INCOME TAX APPELLATE TRIBUNAL

“A” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA Nos. 995 & 996/Bang/2015
Assessment Years : 2010-11 & 2011-12

M/s. Dream Logistics Company [India] Pvt. Ltd., 804, Block “A”, Mantri Greens, No. 1, Sampige Road, Malleswaram, Bangalore – 560 003. PAN: AACCD3416C	vs.	The Deputy Commissioner of Income Tax, Central Circle – 1 [1], Bangalore.
APPELLANT		RESPONDENT
Appellant by	:	Shri V. Srinivasan, Advocate
Respondent by	:	Shri Arvind, Standing Counsel
Date of hearing	:	22.01.2019
Date of Pronouncement	:	15.03.2019

ORDER

Per Shri A.K. Garodia, Accountant Member

Both these appeals are filed by the assessee and the same are directed against the combined order of Id. CIT (A)-11, Bangalore dated 30.01.2015 for Assessment Years 2010-11 and 2011-12. Both these appeals were heard together and are being disposed of by way of this common order for the sake of convenience.

2. The grounds raised by the assessee for Assessment Year 2010-11 in ITA No. 995/Bang/2015 are as under.

“1. The orders of the authorities below in so far as they are against the appellant, are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The order of assessment passed u/s 153A rws 143[3] of the Act is bad in law and void-ab-initio in as much there was no justification to issue the warrant to search the premises of the appellant and the residential premises of the Directors and employees as the conditions specified in terms of Sec. 132[1][a], [b] and [c] of the Act did not exist and therefore the search action is illegal having regard to the parity of the ratio of the decision of the Hon'ble Supreme Court in the case of AJITH JAIN reported in 260 ITR 80 and the Hon'ble Karnataka High Court in the case of C. RAMAIAH REDDY reported in 339 ITR 210 and consequently the impugned assessment order

deserves to be cancelled.

3. Without prejudice to the above, the learned CIT[A] is not justified in upholding the addition of Rs. 92,07,500/- in respect of certain cash payments alleged to have been made by the appellant outside the books of accounts, which was erroneously offered in the return of income filed but, later on withdrawn and clarified in course of assessment proceedings under the facts and in the circumstances of the appellant's case.

4. The learned CIT[A] is not justified in upholding a further addition of Rs.1,57,86,900/- in respect of certain cash payments alleged to have been made by the appellant outside the books of accounts, which was erroneously offered during the course of search on 15/02/2011 and later explained to be incorrect during the course of search proceedings themselves, under the facts and in the circumstances of the appellant's case.

5. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies itself liable to be charged to interest u/s. 234-A, 234-B and 234-D of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.

6. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.”

- 3. Similarly, the grounds raised by the assessee for Assessment Year 2011-12 in ITA No. 996/Bang/2015 are as under.**

“1. The orders of the authorities below in so far as they are against the appellant, are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned CIT[A] is not justified in uphold the addition of Rs. 80,00,000/- in respect of certain cash payments alleged to have been made by the appellant outside the books of accounts, which was erroneously offered in the return of income filed but, later on withdrawn and clarified in course of assessment proceedings under the facts and in the circumstances of the appellant's case.

3. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies itself liable to be charged to interest u/s. 234-A, 234-B and 234-C of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.

4. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal

may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.”

4. At the very outset, it was submitted by Id. AR of assessee that he has filed brief synopsis containing six pages and he submitted that this brief synopsis contains the date wise events of his case along with the details of issues in dispute and arguments of the assessee. He also submitted that Ground No. 1 in both years and Ground No. 6 in A. Y. 2010 – 11 and Ground No. 4 in A. Y. 2011 – 12 are general and hence, no separate adjudication is called for in respect of these grounds. About Ground No. 2 in A. Y. 2010 – 11, he submitted that this ground is not pressed. Regarding Ground No. 5 in A. Y. 2010 – 11 and Ground No. 3 in A. Y. 2011 – 12, he submitted these grounds are consequential. In respect of Ground No. 4 in A. Y. 2010 – 11, he submitted that on page nos. 60 and 61 of the paper book is the copy of statement recorded on oath u/s.131 of IT Act on 15.03.2011 from Shri Vivek .S. Hebbar, MD of the assessee company and in particular, our attention was drawn to question no. 3 and its reply. He submitted that this is admitted position of fact that as per this statement, MD of the assessee company has agreed for income from different sources and the same was offered for taxation to the extent of Rs. 2,49,94,400/- for Assessment Year 2010-11 and Rs. 113 Lakhs for Assessment Year 2011-12. Thereafter he drawn our attention to letter dated 29.03.2011 from assessee addressed to DDIT(Inv.), Hubli available on page no. 62 of the paper book and the statement u/s.131 of IT Act of Shri Vivek .S. Hebbar, MD of the assessee company recorded on 29.03.2011 copy available on pages 63 to 65 of paper book. He pointed out that in the letter dated 29.03.2011 available on page no. 63 of paper book, the disclosure made by the assessee as per statement u/s.131 recorded on 15.03.2011 for Assessment Year 2010-11 was partly retracted and it was reduced to Rs. 92,07,500/- as against Rs. 2,49,94,400/- disclosed earlier although the disclosure for the next year i.e. Assessment Year 2011-12 remained same i.e. Rs. 113 Lakhs. He also pointed out that in reply to question no. 3 of this statement recorded on 29.03.2011, it was specifically stated by the MD of the assessee company that he has verified the books of accounts of the assessee company that the entry at page no. 7

dated 10.09.2009 of Rs. 52,23,000/- and the entry at page no. 41 dated 29.09.2010 for Rs. 1,05,63,900/- are appearing in the books of accounts and hence, he wanted to withdraw these two entries from the admission which he has made on 15.03.2011 and the total disclosure for these two years was reduced to Rs. 2,05,07,500/- as against earlier disclosure for these two years of Rs. 3,62,94,400/-. He also drawn our attention to copy of letter dated 01.04.2011 addressed by the assessee to the DDIT (INV), Hubli copy available on pages 66 to 69 of paper book and pointed out that on page no. 68 of the paper book is the ledger copy of the account of Raj Logistic Company for the month of March 2010 as appearing in the books of accounts of the assessee company and on page no. 69 of the paper book is the copy of ledger account of Sri Saikrupa Minerals – Hospet for Financial Year 2009-10 as appeared in the books of the assessee company. He also pointed out that it was explained by the assessee in the letter dated 01.04.2011 that these two entries of Rs. 1,05,63,900/- on page no. 41 of seized material and Rs. 52.23 Lakhs available on page no. 7 of the seized material is explained with the help of entries in these two ledger accounts. Thereafter he also submitted that on page nos. 70 to 95 of paper book is the copy of letter dated 05.04.2011 along with enclosures addressed to DDIT(Inv.), Hubli and as per these letters and enclosures also, the assessee has explained these two entries in dispute found recorded on seized cash book page 7 and seized cash book page 41. He submitted that in this letter, the assessee has explained all pages of seized cash book but for the purpose of deciding these two appeals, only page 7 and 41 of the seized cash book are relevant. Thereafter he submitted that on 08.04.2011 also, statement of Shri Vivek S. Hebbar, MD of the assessee company was recorded and copy of the same is available on pages 96 to 97 of paper book and in particular, our attention was drawn to question no. 4 and its reply. He also drawn our attention to copy of letter dated 11.03.2013 addressed to the AO during the course of assessment proceedings copy available on pages 98 to 105 of paper book. He submitted that in the light of these documents and arguments, Ground No. 4 of the assessee's appeal for Assessment Year 2010-11 should be allowed.

5. In respect of ground no. 3 for Assessment Year 2010-11 and ground no. 2 for Assessment Year 2011-12, he submitted that these two amounts involved in these two grounds in these two years of Rs. 92,07,500/- and Rs. 80 Lakhs respectively were included by the assessee in return of income filed by the assessee but later on, it was noticed by the assessee that these two amounts are not taxable because these are also appearing in the regular books of accounts. He placed reliance on the judgement of Hon'ble Karnataka High Court rendered in the case of Bhandari Metals and Alloys (P.) Ltd. vs. State of Karnataka as reported in 136 ITR 292 in support of this contention that even after including an income in the return of income filed by the assessee, the assessee can argue for its exclusion. He submitted that in this case, it was held by Hon'ble Karnataka High Court that even if assessee filed returns and paid tax, assuming the turnover as exigible to tax and returns accepted and the assessment order passed, the assessee can file appeal later on claiming exemption and such appeal is maintainable. He submitted that on the same line, although the assessee has included these amounts in the income as per the return of income filed by the assessee in the present case, then also, the assessee can claim later on that such amount included by the assessee in the return of income is not liable to tax.
6. As against this, the Id. DR of revenue supported the orders of authorities below in both the years. Regarding ground no. 4 in Assessment Year 2010-11, he submitted that the AO has examined the contention of the assessee in detail and has rejected the same as per the order passed by him. He also submitted that the seized material in question is available on page no. 54 of the paper book and from the same it can be seen that the working is in respect of purchase of iron ore only and not in respect of transporting and therefore, the explanation given by the assessee that the amount of Rs. 52.23 Lakhs noted on this page is in relation to transporting charges paid to Raj Logistic Company and Sri Saikrupa Minerals – Hospet is not acceptable. He also submitted that no transporting contract was made available to the AO or CIT(A) or to the Tribunal. He submitted that this claim is an afterthought and therefore, it is not acceptable.

7. Regarding the ground no. 3 in Assessment Year 2010-11 and ground no. 2 in Assessment Year 2011-12, he submitted that the judgement of Hon'ble Karnataka High Court cited by Id. AR of assessee rendered in the case of Bhandari Metals and Alloys (P.) Ltd. Vs. State of Karnataka (supra) is not applicable in the present case because in that case, the assessee was able to explain the reason due to which the assessee wrongly included the amount of turnover in dispute in the return filed by the assessee by showing that there was amendments as per which on non-ferrous metal scrap coming from outside State into local area for use, no entry tax was leviable w.e.f. 01.04.1995 and this was not known to the assessee immediately. He submitted that in the present case, the claim of the assessee is not on the basis of any amendment in the law and therefore, this judgment is not applicable in the present case. He submitted that ground no. 3 in Assessment Year 2010-11 and ground no. 2 in Assessment Year 2011-12 should be rejected because the assessee cannot plead for reduction in the returned income on the basis of vague arguments.
8. We have considered the rival submissions. We find that ground no. 2 in Assessment Year 2010-11 is not pressed by Id. AR of assessee. Accordingly, this ground is rejected. We also find that ground nos. 1 and 6 in Assessment Year 2010-11 are general and ground no. 5 in this year is consequential in respect of charging of interest u/s. 234A, 234B and 234D of IT Act. Similarly in Assessment Year 2011-12, ground nos. 1 and 4 are general and ground no. 3 is consequential because the same is regarding charging of interest u/s. 234A, 234B and 234C of IT Act. Hence we hold that no adjudication is called for in respect of these grounds.
9. Now we are left with ground nos. 3 and 4 in Assessment Year 2010-11 and ground no. 2 in Assessment Year 2011-12. When we examine these grounds, we find that as per ground no. 4 in Assessment Year 2010-11, the assessee is asking relief in respect of addition made by the AO of Rs. 1,57,86,900/- on the basis of disclosure made by the assessee on 15.03.2011 although such disclosure was retracted by the assessee on 29.03.2011 i.e. in less than 15 days. But ground no. 3 in Assessment Year

2010-11 and ground no. 2 in Assessment Year 2011-12 are regarding assessee's claim to exclude income which the assessee has itself included in the return of income filed by the assessee for these two Assessment Years.

10. We first discuss and decide this issue involved in ground no. 3 in Assessment Year 2010-11 and ground no. 2 in Assessment Year 2011-12. This is undisputed factual position that these two amounts of Rs. 92,07,500/- in Assessment Year 2010-11 and Rs. 80 Lakhs in Assessment Year 2011-12 were not only admitted by the assessee in the statement of Shri Vivek .S Hebbar, MD of the assessee company u/s. 131 of IT Act on 15.03.2011 but the same was also accepted in later statements and later letters and in the return of income filed by the assessee also, this amount was included by the assessee in the income declared by the assessee in these two returns of income filed by the assessee for Assessment Year 2010-11 and Assessment Year 2011-12. In our considered opinion, when the assessee has accepted in various statements recorded u/s. 131 that these two amounts are undisclosed income of the assessee and the assessee has also included these two amounts in the return of income filed by the assessee for these two Assessment Years, the assessee can still plead for reduction of these two amounts from the taxable income of the assessee if the assessee can bring cogent evidence on record to establish beyond doubt that these two amounts are not the income of the assessee. In the present case, the assessee is making various arguments in this regard but no cogent evidence could be brought on record by assessee to establish beyond doubt that these two amounts are not income of the assessee in these two years. Hence we find no merit in ground no.3 for Assessment Year 2010-11 and ground no. 2 for Assessment Year 2011-12. These grounds are rejected.
11. In the result, the appeal of the assessee for Assessment Year 2011-12 is dismissed.
12. Now we are left with ground no. 4 in Assessment Year 2010-11. The amount of Rs. 1,57,86,900/- being disputed by assessee as per this ground is sum total of entries on two pages of seized cash book i.e. on page nos. 7

and 41 available on pages 54 and 57 of the paper book. We reproduce the relevant portion of these two pages of the seized material from page no. 54 and 57 of the paper book which is reproduced by the AO also on page nos. 7 and 10 of the assessment order.

Cash Book Page 7 :

<i>Particulars as found in Cash Book</i>	<i>Amount</i>
<i>1) 10,000.32 X 950</i>	<i>9,500,304.00</i>
<i>1144.35 X 850</i>	<i>972,697.00</i>
	<i>10,473,001.00</i>
<i>Ch Payment</i>	<i>5,250,000.00</i>
<i>Balance</i>	<i>5,223,000.00</i>
	<i>5,223,000.00</i>

*The seized page 41 reads as under;
Ashwathrtarayan Singh & Co – Mahalaxmi*

	<i>16,593-290</i>	
	<i>12,000-000</i>	
	<i>4593-000 x 2300</i>	<i>1,05,63,900.00</i>
<i>29/3/2010</i>	<i>Payment</i>	<i>1,05,63,900.00</i>
		<i>000000</i>
<i>3/05/2010</i>	<i>20230.600MT</i>	
	<i>-16,593.000</i>	
	<i>3637.600x2300</i>	<i>83,66,480.00</i>
		<i>(-)80,00,000.00</i>
	<i>Forward Balance</i>	<i>3,66,480.00</i>
	<i>Dt.13-05-2010</i>	

13. We find that the contents of these two pages of paper book i.e. page nos. 7 and 41 are reproduced by the AO on pages 7 and 10 of the assessment order along with the assessee's submissions in this regard and the AO's finding on page nos. 7 to 12 of the assessment order.
14. First we discuss and decide about entries on cash book page no. 7 in respect of Rs. 52.23 Lakhs. As per the entries on this page of paper book reproduced by the AO on page 7 of the assessment order, it is seen that the amount was initially worked out at Rs. 1,04,73,001/- out of which the amount of cheque payment of Rs. 52.50 Lakhs was reduced and the

balance was worked out at Rs. 52.23 Lakhs and the same was also reduced and brought to Nil without any narration. The AO is assuming that this reduction of Rs. 52.23 Lakhs is on account of cash payment but there is no narration in the seized material in this regard. The assessee's explanation in this regard is this that initially, purchase was agreed for 10,000 MT at Rs. 950/- per MT and 1144 MT at Rs. 850/- per MT including transportation charges. But later on, the rate was finalized at Rs. 525/-/MT without transporting because the material is of low grade and transportation charges were finalized at different rates depending on the circumstances such as location of the dumping plot and market conditions prevailing at the time of transportation in respect of freight rate. This is the explanation that the value of iron ore finalized for 10,000 MT at Rs. 525/- per MT of Rs. 52.50 Lakhs was paid to that party i.e. Ashwathnarayan Singh & Co by cheque and there is no dispute on this part. The assessee has also explained that transportation relating to this cargo was carried out by Sri Saikrupa Minerals and as against estimation of Rs. 52.23 Lakhs as mentioned in the seized book regarding transportation of this cargo, actual transportation varied based on the various transportation rates based on the circumstances at the time of transportation and the bill in this regard was produced by M/s. Saikrupa Minerals vide B No 2 dt 10.08.2009 of Rs. 57,41,404/- which is including this quantity delivered 10,000 MT and the payment against this bill was made by cheque of Rs. 50,94,456/- and amount of advance paid to them was also adjusted. This argument of assessee has been rejected by the AO on this basis that the seized material shows entries only in respect of purchase of iron ore and there is no entry towards transportation charges. In our considered opinion, if we go by the entry in the seized material only, then there is no such narration against this amount of Rs. 52.23 Lakhs that this much amount was paid by cash although for the payment of Rs. 52.50 Lakhs, it is specifically stated that it is paid by cheque. This is admitted position of fact that the seized cash book available on page no. 51 of paper book is not a regular cash book although the book used is having printing of "Cash Book" but the nature and style of entries are not like a cash book. Hence, in our considered opinion, explanation of the assessee should not

be rejected outrightly and should be examined on merit and if no merit is found therein then only it can be rejected. The AO has also stated that assessee has failed to establish that how the payment made to Saikrupa Minerals is related with the amounts paid in cash to Ashwathnarayan Singh & Co. The AO also says that ledger account of Saikrupa Minerals does not indicate payment of Rs. 52.23 Lakhs on a single day. In our considered opinion, in the absence of any narration against this amount of Rs. 52.23 Lakhs in the seized material, this is only an assumption of the AO that this is on account of cash payment but such assumption is not supported by the entry in the seized material. As per the ledger copy of Saikrupa Minerals appearing on page no. 69 of paper book, it is seen that amount of Rs. 57,41,404/- is credited to the account of this party in respect of Transportation Hire Charges for 7,794.340 MT @ Rs. 455/- per MT + 4,739.760 MT @ Rs. 465/- per MT. The total quantity comes to 12,534.100. In our considered opinion, this explanation of the assessee is acceptable particularly when there is no such narration in the seized material that this amount of Rs. 52.23 Lakhs noted on page no. 7 of the seized cash book is on account of cash payment to any party.

15. Now we examine the explanation of the assessee in relation to entries on page 41 of the seized material. As per the entries on page 41 of the seized material as reproduced above, we find that an amount of Rs. 105,63,900/- was computed for 4593 MT @ Rs. 2300 per MT and the same amount was reduced giving a date of 29.03.2010 with the narration " payment" and then the figures were struck off regarding the said amount of payment. Regarding this entry in the seized material, it is explained by the assessee in letter dated 01.04.2011 addressed to DDIT (Investigation) copy available on page 66 to 67 of the paper book that this transportation was done by M/s Raj logistic Company and the same was included in the bills of this party being bill no. 143 & 144 both dated 31.03.2010 of Rs. 84,62,014/- and Rs. 91,41,806/- respectively with a total of Rs. 176,03,820/-. Copy of ledger account of this party in the books of the assessee is available on page 68 of the paper book and as per the same, these two bills are accounted for and there is a payment of Rs. 1 Crore by cheque on 22.03.2010. It was

submitted by the learned AR of the assessee in his oral arguments before us that because of this on account payment on 22.03.2010, the figures of payment on 29.03.2010 in the seized material was struck off because no such payment was actually made in addition to this payment by Cheque of Rs. 1 Crore. We find merit in these submissions because we find that the amount of Rs. 105,63,900/- against date 29.03.2010 with narration "Payment" was struck off and therefore, we enclose the photo copy of this page 41 of the seized material as available on page 57 of the paper book. In our opinion, this amount cannot be considered for addition in view of these facts that the amount in question is struck off in the seized material itself and the reasons about such striking off are explained by the assessee being on account payment by cheque of Rs. 1 Crore and no further enquiry is made by the department whether DDIT (Investigation) or the AO in spite of retraction by the assessee as early as on 29.03.2011 i.e. before expiry of 15 days from the date of the first statement u/s 131 on 15.03.2011 in which declaration was made after including these two amounts. In view of this, we delete this addition also. Accordingly, Ground No. 4 for A. Y. 2010 – 11 is allowed.

16. In the result, the appeal filed by the assessee for Assessment Year 2010-11 is partly allowed.
17. In the combined result, the appeal filed by the assessee for Assessment Year 2010-11 is partly allowed and the appeal for Assessment Year 2011-12 is dismissed.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 15th March, 2019.
/MS/

Copy to:

1. Appellant
2. Respondent
3. CIT

4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.