

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCHE, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.587/Ind/2016  
Assessment Year: 2012-13**

M/s Anant Steels Pvt. Ltd. 170/10, Film Colony RNT Marg, Indore M.P. (Appellant)	<b>बनाम/</b> Vs.	ITO-1(4) Indore M.P. (Revenue)
P.A. No.AACCA1283E		

**ITA No.792/Ind/2016  
Assessment Year: 2012-13**

DCIT-1(1) Indore (Appellant)	<b>बनाम/</b> Vs.	M/s Anant Steels Pvt. Ltd. 170/10, Film Colony RNT Marg, Indore M.P. (Respondent)
P.A. No.AACCA1283E		

Appellant by	Shri S.N. Agrawal, AR
Revenue by	Shri Ashima Gupta, CIT-DR
<b>Date of Hearing:</b>	<b>05.03.2019</b>
<b>Date of Pronouncement:</b>	<b>28.03.2019</b>

**आदेश / O R D E R**

**PER KUL BHARAT, J.M:**

These two appeals by the Assessee and the Revenue are directed against the order of Commissioner of Income Tax(Appeals)-I Indore dated 21/02/2016 pertaining to assessment year 2012-13.

First we take up revenues' appeal in ITANo.792/Ind/2016.

The revenue has raised following grounds of appeal:

1. *“Whether on the facts and circumstances of the case, the learned CIT(A) has erred in restricting the addition made on account of estimated GP.*
2. *Whether on the facts and circumstances of the case, the learned CIT(A) has erred in deleting the addition of Rs. 7,97,54, 165/ - and Rs.3,41,55,992/~ made on account of alleged excise duty and VAT Tax collected but not paid in Government account.*
3. *Whether on the facts and circumstances of the case, the learned CIT(A) has erred in ignoring the facts of the case that the addition made on account of alleged excise duty and VAT Tax were based on incriminating invoices seized during the excise search and the same was not included in the turnover.*
4. *Whether on the facts and circumstances of the case, the learned CIT(A) has erred in deleting the addition of Rs. 5, 00, 00, 000/ - made on account of unexplained investment to make unaccounted turnover of Rs. 77,41,64,850/-.*
5. *Whether on the facts and circumstances of the case, the learned CIT(A) has erred in ignoring the facts that working capital (unaccounted) is needed to run unaccounted business.”*

2.The facts giving rise to the present appeal are that case of the assessee was picked up for scrutiny assessment and the assessment u/s 143(3) of the Income Tax Act, 1961 (hereinafter called as 'the Act') was framed vide order dated 31.3.2015. While framing the assessment, assessing officer rejected the books of accounts and estimated gross profit of unaccounted sales. The A.O. noticed that Director General of Central Excise (Investigation) conducted search on 5.1.2012 at office premises, factory, residential premises of the key persons and seized various documents. The Commissioner of Central Excise, after scrutinising the books of accounts, loose documents and other documents, issued show cause notice, thereby the assessee was called upon to explain about clandestine clearance of TMT bars valued at Rs.94,79,17,806/-. The A.O., therefore, issued a notice to the assessee and made addition on the basis of the enquiry conducted by the Central Excise Department. The AO also rejected books of accounts and made addition account of gross profit at Rs.8 crores, addition on account of Central Excise at

Rs.7,97,54,165/-, addition on account of VAT Rs.3,41,55,992/- and undisclosed investment of Rs.5 crores.

3. Aggrieved by this the assessee preferred an appeal before the ld. CIT(A) who after considering the submissions partly allowed the appeal. Ld. CIT(A) thereby, upheld rejection of books of accounts however Ld. CIT(A) applied the net profit @ 2.3% on the total turnover including turnover determined by the Excise Authority. Further, Ld. CIT(A) deleted the addition made in respect of Excise Duty and VAT alleged to have been collected by the assessee. The Ld. CIT(A) deleted the addition of Rs.5,00,00,000/- made on account of investment on the alleged unaccounted business. The ld. CIT(A) directed the AO to verify the claim of credit of taxes as available u/s 115JA of the Act and allow claim of credit of taxes as per law. Against this both assessee and revenue are in appeal.

4. The Revenue through ground no.1 is in appeal against restricting the GP rate @ 5% to NP rate @ 2.3% by Ld. CIT(A). Ld. CIT-DR supported the order of the AO and

submitted that Ld. CIT(A) was not justified in not confirming the finding of the AO. Ld. CIT-DR submitted that the AO had applied 5% on the total turnover including the alleged suppressed sales as found by the officials of the Central Excise Department. Ld. CIT-DR submitted that the Ld. CIT(A) ought to have affirmed the view of the AO. On the contrary, Ld. counsel for the assessee reiterated the submission as made in the written submissions filed before us. The submissions of the assessee are that the AO was not justified in rejecting the books of accounts. The book results could not have been disturbed. It is contended that admittedly the show cause notice issued by the Excise Department and order in original appeal have been set aside by the CESTAT vide order dated 27.9.2018. The ratio laid down in the case of CIT vs. Somani Pilkington's Ltd., 133 Taxman 717 (P & H) further supports the claim of the assessee. More so no independent inquiry in this regard was made by the AO.

5. We have considered the rival submission and perused the material available on record. Ld. CIT(A) after

considering the submissions and relying upon earlier order of the Tribunal applied net profit @ 2.3%. We find that Ld. CIT(A) observed that in assessee's own case for the assessment year 2007-08 in IT(SS)A Nos.24 & 35/Ind/2010, the Tribunal vide order dated 13.2.2012 had approved application of net profit rate @3.3% for estimation when there was evidence of unrecorded transactions. However, considering other factors, Ld. CIT(A) applied the rate @ 2.3% on the entire turnover. Considering totality of facts, admittedly the turnover which the basis of show cause notice of Excise Department has been set aside by the CESTAT, therefore the component is not available now for estimating the profit. We, therefore, direct the AO to adopt a net profit @3.3% on the turnover excluding the turnover as determined by the Excise Authorities. Accordingly, this ground of the appeal of the Revenue is partly allowed.

6.Through ground nos.2 & 3, the Revenue has challenged the addition of Rs.7,97,54,165/7 & Rs.3,41,55,992/- totaling to Rs.11,39,10,157/- on account of excise duty

and VAT tax collected on the amount of estimated turnover as calculated by the Excise Department. This amount was added to the income of the assessee by the Assessing Officer on account of alleged unaccounted sales. The ld. CIT/DR supported the order of the Assessing Officer. On the other hand, learned Counsel for the assessee relied upon the order of the ld. CIT(A). Considering the material available on record, we find that the CESTAT vide order dated 27.9.2018 has set aside the order passed by the Commissioner of Central Excise and Service Tax, therefore, the action of the Assessing Officer is not justified. Accordingly, we confirm the order of the ld. CIT(A). Thus, ground nos.2 & 3 of the appeal of the Revenue are dismissed.

7.Through ground no.4, the Revenue has challenged the deletion of addition of Rs.5 crores on account of unaccounted business of the assessee. The Assessing Officer on the basis of show cause notice of the Excise Department reached to a conclusion that the assessee was engaged in the business of unaccounted sales out of its

books of account and therefore, some investment would also have been made by the assessee for the alleged unaccounted business. The ld. CIT/DR supported the order of the Assessing Officer. On the other hand, learned Counsel for the assessee relied upon the order of the ld. CIT(A). Considering the material available on record, we find that the CESTAT vide order dated 27.9.2018 has set aside the order passed by the Commissioner of Central Excise and Service Tax, therefore, the action of the Assessing Officer is not justified. Accordingly, we confirm the order of the ld. CIT(A). Thus, ground no.4 of the appeal of the Revenue is dismissed.

8. Now, we take up the appeal of the assessee in ITA No.587/Ind/2016 wherein the assessee has raised following grounds of appeal:

*“1. That On the facts and in circumstances of the case, ld. CIT(A) has erred in approving the order as passed u/s 143(3) of the Act after making various addition to the income of the assessee even when case of the assessee was selected under CASS. The addition so made requires to be restricted limited to the reasons for selection under CASS.*

*2. That On the facts and in circumstances of the case, ld. CIT(A) has erred in approving the order as passed by the ITO even when he was not authorised to pass order in the*

*case of the assessee company.*

*3. That On the facts and in circumstances of the case, ld. CIT(A) has erred in approving the rejection of books of account even when books of account is duly audited and there was no reason for rejection of the same.*

*4. That On the facts and in circumstances of the case, ld. CIT(A) has erred in maintaining the addition of Rs.3,43,50,556/- on account of low gross profit without properly appreciating the facts of the case and submission made before him.”*

9.Ground nos. 1 &2 of the appeal of the assessee are with regard to the fact that when the case of the assessee was selected under CASS, then the Assessing Officer had no jurisdiction to make inquiry other than the reason for selection of the case for scrutiny. During the course of hearing, the learned Counsel for the assessee did not press ground nos.1 & 2 of the appeal of the assessee. Therefore, same are dismissed as not pressed.

10.Ground No.3 of the appeal of the assessee is with regard to rejection of books of account.

11.The Assessing Officer held that the assessee had not followed the provisions of Section 145 of the Income Tax Act. The ld. CIT/DR supported the order of the Assessing Officer. On the other hand, learned Counsel for the

assessee relied upon the order of the ld. CIT(A). We find that the Assessing Officer discussed the contents related to the show cause notice, cash payments towards purchase of scrap and also cash payment to the transporter on the same day, statements of Smt. Neera Banasal and Mayank Bansal, unexplained investment and valuation of closing stock and g.p. rate etc. in detail in the assessment order. While deciding ground no.1 of the appeal of the Revenue, we have partly allowed the ground of the appeal of the Revenue discussing the facts of present issue. Considering the material and rival submissions available on record, we find the ld. CIT(A) was justified in approving the action of the Assessing Officer. Thus, this ground of the appeal of the assessee is dismissed.

12.Ground no.4 of the appeal of the assessee is with regard to addition on account of low gross profit.

13.We find that this issue has already been decided by us while deciding ground no.1 of the appeal of the Revenue. Following the reasoning given in foregoing paras, we set

aside the order of the ld. CIT(A) on this issue. Accordingly, this ground of the appeal of the assessee is dismissed.

14.Finally, appeal of the Revenue is partly allowed whereas the appeal of the assessee is dismissed.

*Order was pronounced in the open court on 28.03.2019.*

Sd/-  
(MANISH BORAD)  
ACCOUNTANT MEMBER

Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER

Indore; दिनांक Dated : 28/03/2019

*Patel, P.S/.नि.स.*

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order  
**Assistant Registrar, Indore**