

आयकर अपीलिय अधीकरण, न्यायपीठ – “B” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
 (समक्ष) श्री ऐ. टी. वर्की, न्यायीक सदस्य एवं डॉ. अर्जुन लाल सैनी, लेखा सदस्य)
 [Before Shri A. T. Varkey, JM & Dr. A. L. Saini, AM]

I.T.A. No. 98/Kol/2015
Assessment Year: 2003-04

Deputy Commissioner of Income-tax, Central Circle-1(2), Kolkata.	Vs.	M/s. Merino Panel Products Ltd. (PAN: AABCM5672Q)
Appellant		Respondent

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I.T.A. No. 85/Kol/2015
Assessment Year: 2003-04

M/s. Merino Panel Products Ltd.	Vs.	Assistant Commissioner of Income- tax, Central Circle-IV, Kolkata.
Appellant		Respondent

Date of Hearing	31.01.2019
Date of Pronouncement	03.04.2019
For the Revenue	Shri A. K. Singh, CIT, DR
For the Assessee	Shri Shyam Sunder Jha, FCA

ORDER

Per Shri A.T.Varkey, JM

These cross appeals preferred by the revenue and the assessee are against the order of Ld. CIT(A), Central-1, Kolkata dated 05.11.2014 for AY 2003-04.

2. The main grievance of the revenue is against the partial relief granted to the assessee by restricting the addition to only Rs.23,55,288/-, when the AO made an addition of Rs.6,53,81,975/- whereas, the assessee is against the action of Ld. CIT(A) in confirming the addition to Rs.23,55,288/-.

3. Briefly stated the facts are that the AO passed the order u/s. 147/154 on 07.12.2010 computing the total income of Rs.8,45,21,950/- and quantified the tax thereon at Rs.3,10,61,817/-. While computing the said total income, the AO added the sum of Rs.6,53,81,975/- by observing that “from the P&L Account ended on 31.03.2003, the assessee had shown sales of goods of Rs.35,96,94,000/- and sale of raw material respectively. Further, in clause 7(ii) of the ‘Notes on Accounts’ of Schedule XVII of Balance Sheet it is claimed that out of the above sale of goods and raw material of Rs.10,67,60,000/- was sold to its holding company M/s. Century Laminating Co. Ltd. presently known as M/s. Merino Industries Limited. During the assessment proceedings for AY 2003-04 M/s. Century Laminating Co. Ltd. has filed details of purchase above Rs.50,000/-. From the details it is seen that M/s. Century Laminating Co. Ltd. has purchased goods of Rs.17,21,41,975/- from M/s. Merino Panel Products Ltd. so on cross verification it transpired that the assessee had understated its sales to the tune of Rs.6,53,81,975/-.” Therefore, the AO concluded that the assessee has suppressed its sales by Rs.6,53,81,975/- and being satisfied that income to that extent has escaped assessment issued notice u/s. 148 of the Act on 28.10.2009. The assessee responded by submitting that the return filed u/s. 139 of the Act be treated as the return filed in compliance to the notice u/s. 148 of the Act. The AO communicated on 25.11.2010 to the assessee the reasons for the reopening of the assessment. The AO noted in the impugned order that the assessee filed its reply in response to the notice u/s. 142(1) but failed to reconcile the suppression of sales. The AO then made addition of Rs. Rs.6,53,81,975/-. Aggrieved, assessee preferred an appeal before the Ld. CIT(A), who restricted the addition to Rs.23,55,288/- in place of Rs.6,53,81,975/- by observing as under:

“15. The submissions alongwith the supportive documents produced by the assessee in course of the appellate proceedings were sent to the AO for verification. The AO in his remand report dated 11-10-2011 rejected the reconciliation filed by the assessee as "afterthought". The AO submitted another remand report on 27-08-2014 wherein it was admitted that the assessee furnished in course of the remand proceedings certified copy of balance sheet (un-audited) of the Jaipur Branch showing total purchases of Rs.69,15,122/- only; the ledger copy of Head Office and Hyderabad Branch showing purchases of Rs.42,70,957/- and Rs.14,702/- and, the ledger copy of Kachchh Enterprises showing

purchase of Rs.2,64,352/-. The AO further admitted that the assessee also submitted a printed booklet containing the audited accounts of the holding company for the relevant year wherein total purchase of Rs.10,91,15,000/- from the assessee was shown under related party transactions (point no. 8 of Notes on Accounts Schedule-XX). It also appears from the reply of the assessee incorporated by the AO in his remand report that the consolidated balance sheet and profit & loss account in the form of spread-sheets (containing separate figures for each branch and the head office) which constituted the basis for preparing the financial statements of the holding company was furnished in course of the remand proceedings. It was also reiterated before the AO that the total figure of purchases Rs.17,21,41,975/- as adopted by him in the impugned order wrongly included the purchase of Rs.2,64,353/- made by the Ahmedabad Branch from Kachchh Enterprise which was not relevant to the case of the assessee. The AO has however contended in his remand report that the genuineness of the claims made by the assessee could not be verified as supporting bills and vouchers were not produced. The AO has therefore argued that the addition on account of suppressed sales was justified. The Ld AR in his rejoinder has reiterated the submissions made in course of the appellate proceedings and laid emphasis on the documents already placed on record. The Ld AR has argued that the assessee has filed the reconciliation statements and also produced sufficient material on record to show that there was no suppression of sales. The AO however has neither pointed out any defect in the reconciliation statements nor disproved the genuineness of the documents placed on record before him. The Ld AR has also argued that the AO has brought no positive material on record to prove that the assessee was involved in suppression of sales. The AO has merely relied on the details filed by the holding company in course of its assessment proceedings to draw adverse inference in the case of the assessee. The Ld AR has argued that the AO has erred in law in relying on the material produced by a third party to draw adverse inference in the case of the assessee when there was no corroborative material on record. The Ld. AR has contended that there was no independent material whatsoever on record to show that the assessee was involved in suppression of sales. Above all, the audited accounts of the assessee as well those of the holding company were placed on the record of the AO which does not support his finding that the assessee was involved in suppression of its sales. The Ld AR has argued that the AO was not legally justified in demanding production of bills and vouchers pertaining to the financial year 2002-03 in the year 2014 after lapse of over 11 years when the holding company was required under law to keep the same for 6 years only. The Ld AR has concluded by submitting that the assessee has filed reconciliation between the sales of Rs.10,67,60(000) as shown in the notes of accounts of the assessee company and the purchases of Rs.10,91,15(000) as shown in the notes of accounts of the holding company [para 5 above] and also its reconciliation between the purchases of Rs.10,91,15,288/- shown by the holding company in its notes on accounts and the purchases of Rs.17,21,41,975/- as adopted by the AO in the impugned assessment order [para 6 to 13 above] and has also produced sufficient supportive material to prove that there was no suppression of sales and that the addition of Rs.6,53,81,975/- as made by the AO in the impugned order was not justified on the facts of the case .

16. I have perused the impugned order and the remand reports of the AO. I have also considered the submissions of the assessee and the material placed on record. I find that the AO has initiated the proceedings u/s 147 and also based his findings in the impugned order solely on the details of purchases produced by the holding company in course of its assessment proceedings. I find substance in the argument of the Ld AR that there is no positive material on record to even suggest that the assessee was in any way involved in

making unaccounted sales to its holding company, I agree that there is not even an iota of evidence to support the finding of the AO that the assessee made unaccounted sales to its holding company. The AO has placed his sole reliance on the details of purchases produced by the holding company in course of its assessment proceedings. I have perused the reconciliation statements and also the supportive material that was placed on record in course of the appellate proceedings. I find that the assessee has produced sufficient material to prove that its contentions as narrated in para 6 to 12 above and duly summarized in para 13 above are factually correct thereby reconciling the figure of purchases of Rs.10,91,15,288/- shown by the holding company in its notes on accounts and that of Rs.17,21,41,975/- as adopted by the AO in the impugned assessment order. For, the holding company in course of its assessment proceedings did furnish as required details of purchases exceeding Rs.50,000/- as made by its branches. The details however did not include purchases of Rs.42,70,957/- made by the Kolkata Head Office and those of Rs.14,702/- made by the Hyderabad Branch as the same was not required by the AO. But, these purchases were obviously included in the purchases shown in the notes on accounts. The ledger copy of Kolkata Head Office and Hyderabad Branch showing purchases of Rs.42,70,957/- and Rs.14,702/- from the assessee was placed on record in support of the contentions. The details of Ahmedabad Branch contained purchases of Rs.10,87,305/- and Rs.78,553/- which the AO considered to reach the figure of Rs.11,65,858/-. The AO however failed to appreciate that the purchase of Rs.78,553/- made by the Ahmedabad Branch was subsequently transferred to Delhi Branch and consequently the same was rightly excluded from the Ahmedabad Branch. The ledger copy of Ahmedabad and Delhi Branches in this regard duly support the contentions of the assessee. The details of Bangalore Branch wrongly included purchase of Rs.85,753/- which was actually made from Kunal Enterprises thereby causing error of Rs.85,753/-. The ledger copy of Bangalore Branch showing purchases from the assessee and from Kunal Enterprises duly support the contentions of the assessee. The details of Hapur Branch contained purchases of Rs.1,27,10,256/- . The AO however included the high sea transactions of Rs.45,38,128/- which was not related to the assessee and for which separate ledger was maintained in the books of the holding company. The material on record also suggests that the purchase of Rs.43,196/- though duly recorded in the purchase ledger was apparently not included in the figure for the notes on account; secondly, the interest component of Rs.4,275/- was wrongly included in the purchases. The major discrepancy of Rs.6,22,36,100/- related to Jaipur Branch. Though actual purchases of Rs.69,15,122/- were made from the assessee, the details furnished by the holding company in course of its assessment proceedings involved typographical error whereby the purchases were shown at Rs.6,91,51,222/-. The Ld AR has placed sufficient supporting material on record to prove that the correct figure of purchases by the holding company was Rs.69,15,122/- only. The AO has also admitted in his remand report that the assessee produced before him in course of the remand proceedings certified copy of balance sheet (un-audited) of Jaipur Branch showing total purchases of Rs.69,15,122/- only. I also find that the profit & loss account of Jaipur Branch (placed on record at page 78 to 82 of the paper-book) clearly show purchases of Rs.69,15,122/- only. The spread sheet which constituted the basis for preparing the financial statements of the holding company (placed on record at page 83 to 87 of the paper-book) also support the contention that the correct figure of purchases by Jaipur Branch was Rs.69,15,122/-. This alone has explained the discrepancy in sales to the extent of Rs.622.36 lakhs as against the addition of Rs.653.82 lakhs made by the AO in the impugned order on account of suppressed sales. The details of Mumbai Branch wrongly included purchase of Rs.70,539/- which was actually made from Bhagwati Plywood thereby resulting in error of Rs.70,539/-. The ledger copy of Mumbai Branch showing

purchases from the assessee and from Bhagwati Plywood duly supports the contentions of the assessee. I find from the impugned order that the AO has not explained as to how did he arrive at the purchase figure of Rs.17,21,41,975/-. The AO has contended in his remand report that the assessee in order to reconcile the figures has introduced unknown figure of Rs.2,64,352/ -. I however find that it was the AO who asserted that sales of Rs.17,21,41,975/- was made by the assessee and therefore it was for the AO to explain the basis of his working. The AO however has not been able to explain his working except for blindly relying on the figures furnished by the holding company in course of its assessment proceedings. In case the purchase of Rs.2,64,353/- was included, then the figure for purchases would tally at Rs. 17,21,41,975/- as adopted by the AO in the impugned order. It therefore appears that the AO has possibly included the figure of purchase of Rs.2,64,353/- which was made from the Kachchh Enterprise by the Ahmedabad Branch. In the given factual background, the assessee appears to have successfully reconciled the purchase figure of Rs.10,91,15,288/- as shown by the holding company in its notes on accounts and the purchase figure of Rs.17,21,41,975/- as adopted by the AO in the impugned assessment order. The addition to the extent of Rs.6,30,26,687/- (Rs.17,21,41,975/- minus Rs.10,91,15,288/-) therefore does not appear to be justified.

17. I have perused the impugned assessment order. It appears that the assessee did file reconciliation statements in course of the proceedings u/s. 147. The AO has however not explained in his assessment order as to why the reconciliation submitted by the assessee was not acceptable to him. I find that the AO did not even discuss such reconciliation in the impugned order and summarily made the addition by stating that "In response to notice u/s. 142(1) dated 22-01-2010 the assessee filed the reply but failed to reconcile the understatement of sales to the extent of Rs.6,53,81,975/-. Hence the amount is added to the income of the assessee". It thus appears that the AO has arbitrarily made the addition without even considering the material that was placed on record before him. In course of the remand proceedings also, the AO has not been able to point out any specific defect in the reconciliation statements or the supporting documents produced by the assessee. The AO has rejected the reconciliation on the ground that bills or vouchers were not produced before him. The AO has found no specific defect or discrepancy in the books of the assessee or in the books of the holding company. I also find from the assessment order of the holding company for the relevant assessment year 2003-04 made u/s 143(3) that no adverse inference was drawn by the same AO in the case of the holding company also. In case the AO was satisfied that the assessee had made unaccounted sales to its holding company, then corresponding addition for unaccounted purchases should have been made by the AO in the hands of the holding company. But, no such addition was made by the AO in the hands of the holding company. The AO has however imported the details filed by the holding company in course of its assessment proceedings to draw adverse inference in the case of the assessee even though no such adverse inference was drawn in the case of the holding company. I find that the AO has based his findings in the impugned order solely on the details of purchases produced by the holding company in course of its assessment proceedings. The AO has failed to bring any positive material on record which could even remotely suggest that the assessee was in any way involved in making unaccounted sales to its holding company. The AO has failed to bring on record even a single piece of evidence to support his finding that the assessee made unaccounted sales to its holding company. The AO has placed his sole reliance on the details of purchases produced by the holding company in course of its assessment proceedings and even when the discrepancies therein were duly explained, the AO still intended to take advantage of those errors to draw adverse inference in the case of the assessee. It is a settled legal proposition that even an

admission which is later retracted and which is not corroborated or supported by any independent material cannot be made the basis for addition. Once the submissions made by the holding company were retracted and duly reconciled, the onus was on the AO to bring positive material on record to corroborate or support his finding that the assessee made unaccounted sales to its holding company. But, in the present case, no such material has been brought on record by the AO. On the contrary, the AO has simply rejected the reconciliation statements on the ground that it was an afterthought. The AO in his remand report has argued that the assessee could not produce evidence to support its contentions. However, I note that the assessment of the holding company was made u/s 143(3) by the same AO and the details of purchases which now constitute the basis of addition in the case of the assessee was also available before the AO but no addition was made on account of unaccounted purchases in the hands of the holding company. I find that the assessee has produced sufficient material in support of its reconciliation statements. I also note that the AO who has demanded production of evidence from the "assessee has no evidence whatsoever in his possession to support his finding that the assessee made unaccounted sales to its holding company. It is only the errors in the details submitted by the holding company that the AO has been hampering around. The AO has no independent material on record to support his finding but he intended to rest his assessment on the errors which have already been duly reconciled. In this factual background, I am of the considered view that the AO has erred in law as well as on facts in resting his assessment on the details filed by the holding company when the same was later retracted and duly reconciled and which was not corroborated or supported by any independent material on record. In view of the above, it is to be held that the assessee has duly reconciled the purchase figure of Rs.10,91,15,288/- as shown by the holding company in its notes on accounts and the purchase figure of Rs.17,21,41,975/- as adopted by the AO in the impugned assessment order. The addition to the extent of Rs.6,30,26,687/- is therefore directed to be deleted.

18. The AO in the impugned order has made addition of Rs.6,53,81,975/- for want of reconciliation. It was explained that the balance difference of Rs.23,55,288/- is due to the fact that the assessee company and its holding company had given different accounting treatment to central & local sales tax, freight & other charges and excise duty in their notes on accounts. It was claimed that the assessee did not consider in its sales the central sales tax and local sales tax (CST & LST) of Rs.42,62,707/- and freight & other charges of Rs.9,092/- whereas the holding company included them in its purchases. Similarly, the excise duty of Rs.19,16,797/- was considered in its purchases by the holding company whereas the same was not included by the assessee in its sales. It was thus explained that when the figures of central sales tax and local sales tax of Rs.42,62,707/-, freight & other charges of Rs.9,092/- and excise duty of Rs.19,16,797/- are taken into consideration, then the figure of sales as shown by the assessee in its notes on accounts should tally with that of purchases as shown by the holding company in its notes on accounts. Though certain calculation sheets were placed on record, no supporting document could be produced by the assessee. I have perused the audited accounts of the assessee company and also those of the holding company. I find that the assessee in its notes on accounts under related party disclosures has shown sales of Rs.10,67,60,000 to its holding company whereas the holding company has shown in its notes on accounts purchases from the assessee at Rs.10,91,15,288/- . I am of the opinion that in so far as the figures contained in the audited accounts were concerned; the onus was on the assessee to reconcile the same. The assessee however has not been able to produce documents to support its reconciliation in this regard. I am therefore unable to interfere with the impugned order in so far as the addition of Rs.23,55,288/- was concerned. The addition to the extent of Rs.23,55,288/- is therefore

confirmed. In effect, the addition made by the AO in the impugned order on account of suppressed sales is restricted to Rs.23,55,288/-. However, I do not find much substance in the arguments made by the assessee in challenging the legal validity of the assessment and the same are therefore rejected. Ground no. 1 to 6 disposed accordingly.”

Aggrieved, both revenue and assessee are in appeal before us raising the grounds as aforestated.

4. We have heard rival submissions and gone through the facts and circumstances of the case. First we take up the assessee's appeal against the confirmation of addition of Rs.23,55,288/-. Before us the Ld. AR filed a reconciliation of Rs.23,55,288/-. Taking note of this reconciliation when this appeal was fixed for hearing on 29.01.2019, we requested the Ld. CIT, DR to verify the reconciliation made by the assessee. So, today when the matter was taken up for hearing, the Ld. CIT, DR has fairly conceded that he has carefully gone through the reconciliation of the amount of Rs.23,55,288/- along with other documents and has found it to be in order. The reconciliation given by the assessee is as under:

“Reconciliation of difference of Rs.23.55 lacs :

	<i>(Rs.000)</i>
<i>Disclosure by MPPL in the notes of account. Sale to CLCL :</i>	<i>10,67,60</i>
<i>Disclosure by CLCL in the notes of account:</i>	
<i>Purchase from MPPL :</i>	<i><u>10,91,15</u></i>
<i>Difference :</i>	<i>23,55</i>

Explanation of Rs. 23.55 lacs:

<i>Due to CST & GST included by CLCL in the figure of</i>	
<i>Purchase from MPPL :</i>	<i>4263/-</i>
<i>Freight included in the purchase by CLCL :</i>	<i><u>9/-</u></i>
	<i>4272</i>
<i>Less : Excise duty reduced by CLCL</i>	
<i>In the figure of purchase :</i>	<i><u>1917</u></i>
	<i>2355 say 23.55 lacs.”</i>

5. Since the Ld. CIT, DR fairly accepted that the assessee was able to reconcile the aforesaid amount, nothing survives and after satisfying ourselves the reconciliation

submitted (supra) we are inclined to allow the assessee a relief of Rs. 23.55 lacs and we order deletion of the said amount.

6. Coming to the Revenue's appeal, we note that the Ld. CIT(A) has given relief after finding the explanation supported by documents filed as correct and so he held the explanation by the assessee it to be in order and when asked by us, the Ld. CIT DR also could not point out any mistake/error in the impugned order which calls for our interference. Therefore, we completely concur with the same reasoning of the Ld. CIT(A) on the facts which we find are corroborated by documents as noted by him. Therefore, we do not want to again repeat our findings concurring with Ld. CIT(A). For doing so, we rely on the order of Hon'ble supreme court in the case of CIT Vs. K. Y. Pilliah & Sons (1967) 63 ITR 411, we confirm the order of Ld. CIT(A). So, we confirm the order of the Ld. CIT(A) on this ground. Therefore, the appeal of the revenue is dismissed and appeal of assessee is allowed.

7. In the result, the appeal of the revenue is dismissed and appeal of assessee is allowed.

Order is pronounced in the open court on 3rd April, 2019.

Sd/-
(Dr. A. L. Saini)
Accountant Member

Sd/-
(A. T. Varkey)
Judicial Member

Dated: 3rd April, 2019

Jd.(Sr.P.S.)

Copy of the order forwarded to:

- 1 Appellant – DCIT, Central Circle-1(2), Kolkata.
- 2 Respondent – Merino Panel Products Ltd., 5, Alexandra Court, 60/1, Chowringhee Road, Kolkata-700 020.
- 3 CIT(A), Central-1, Kolkata.
- 4 CIT , Kolkata.
- 5 DR, Kolkata Benches, Kolkata (sent through e-mail)

/True Copy,

By order,

Assistant Registrar