

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ “बी” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “B”, PUNE

BEFORE MS. SUSHMA CHOWLA, JM AND
SHRI ANIL CHATURVEDI, AM

आयकर अपील स / ITA No.1341/PUN/2016

निर्धारण वर्ष / Assessment year : 2011-12

The Income Tax Officer,
Ward-2, Jalna.

..... अपीलार्थी /
Appellant

बनाम v/s

M/s. Rajamukha Steel and Alloys Limited,
Plot No.D-52/7, Jalna – 431203.

..... प्रत्यर्थी /
Respondent

PAN AAECR6187Q.

Assessee by : None
(Written Submissions)

Revenue by : Shri Pankaj Garg.

सुनवाई की तारीख / Date of Hearing : 05.02.2019	घोषणा की तारीख / Date of Pronouncement: 04.04.2019
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by assessee is emanating out of the order of Commissioner of Income Tax (Appeals) – 1, Aurangabad dated 17.03.2016 for the assessment year 2011-12.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is a company stated to be engaged in the manufacturing of MS Ingots. Assessee electronically filed its return of income for A.Y. 2011-12 on 30.09.2011 declaring total income of Rs.3,89,191/-. The case was selected for scrutiny and thereafter assessment was framed u/s

143(3) of the Act vide order dt.27.09.2011 and the total income was determined at Rs.4,36,16,840/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.17.03.2016 (in appeal No.ABD/CIT(A)/122/2014-15) granted substantial relief to the assessee. Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal before us and has raised the following grounds :

“1. Whether on the facts and in the circumstances of the case the CIT(A) was justified in to delete addition of Rs.21,08,930/- made by AO as suppressed production even after AO The addition were made on sound footing based on categorical finds with data and evidences including circumstantial evidences.

2. On the facts and in the circumstances of the case whether the CIT(A) was justified in not appreciating the fact that data collected by AO are very important in arriving at the actual production.

3. On the facts and in the circumstances of the case whether the CIT(A) was justified in not appreciating the fact that finding made by AO that letters 133(6) notices issued by AO to raw material supplier of company are returned back and addition made by AO at Rs.4,11,18,717/- on account of bogus purchases are correct.”

3. The case file reveals that none attended on behalf of assessee despite issuance of notices. On the date of present hearing also none appeared on behalf of the assessee nor was any adjournment application filed. We therefore proceed to dispose of the appeal ex-parte qua the assessee based on the material available on record and after hearing the Ld. D.R.

4. Grounds 1 and 2 are inter-connected and therefore considered together.

4.1. During the course of assessment proceedings AO called for the details of monthly consumption of raw-material and finished goods, electricity unit consumption and shortage etc. and on the basis of such details received from the assessee, a chart of monthly electricity unit

consumption, production of finished goods in the form of MS Ingots was prepared. On the basis of such analysis, AO noticed that minimum electricity unit consumption per metric ton of production of finished goods of MS Ingots comes to 988 units and the maximum electricity unit consumption per metric ton comes to 1156 units. He thus noted that there was abnormal deviation in electricity unit consumption to the extent of 168 per metric ton which according to him indicates that the assessee has not disclosed the production correctly. He also noticed that there was substantial variation in the wages. He also noticed that assessee had maintained consistency into the yield of finished goods and bye product to the extent of 92.99% average the period with slight negligent variation and in the month of November, 2010 yield was shown at 124.20%. Considering the aforesaid facts, he concluded that the book results of the assessee were not fair and true. AO therefore asked the assessee to explain as to why the provisions u/s 145(3) of the Act not be applied. The submissions made by the assessee were not found acceptable to the AO as he was of the view that assessee has failed to explain the variation in production of electricity and consumption of electricity. He thereafter rejected the books of accounts and estimated the production as per the working made by him. On the basis of lowest consumption of 988.933 units per metric tons of production, he worked out the excess production at 1053.498 metric tons. After considering the average sale price, average purchase price and burning loss and net gain, worked out the suppressed production at Rs.21,08,930/- and added it to the total income of the assessee. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who after considering the submissions of the assessee deleted the addition by following various decisions of the

Tribunal referred to in his order. Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal before us.

5. Before us, Ld.D.R. supported the order of AO but however, he fairly submitted that identical issue has been decided against the Revenue and in favour of the assessee by the various decisions of Pune Tribunal.

6. We have heard the Ld.D.R. and perused the material on record. The issue in the present case is with respect to making addition on account of unaccounted production. We find that Ld.CIT(A) after considering the various decisions of Pune Tribunal as noted in the order, has given a finding that AO has leveled the allegation of unrecorded sales on the basis of some mathematical exercises which suffers from inaccurate calculations and further there was no corroborative evidence on record to support the calculations of the AO. He has further, relying on the decisions of Pune Tribunal, held that no addition can be made merely on the basis of electricity consumption formula. He thus deleted the addition. Before us, Revenue has not pointed out any fallacy in the findings of Ld.CIT(A). We therefore find no reason to interfere with the order of Ld.CIT(A). **Thus, the grounds 1 and 2 of the Revenue are dismissed.**

7. **3rd ground is with respect to deleting the addition of Rs.4.11 crore (rounded off) on account of bogus purchases.**

7.1. During the course of assessment proceedings, AO noticed that assessee had made purchases of raw-material from M/s. JBD Enterprises to the extent of Rs.4,11,18,717/-. He further noted that the aforesaid

party was in the list of Hawala operators and beneficiaries. In order to verify the genuineness of the transactions, letters were issued to JBD Enterprises. AO has noted that the letters were returned back by the Postal Authorities with a remark that the parties were not in existence. The assessee was therefore asked to substantiate the purchases. Assessee furnished confirmation including account extracts, copies of certain bills and submitted that the payments were made through banking channels. The submissions of the assessee were not found acceptable to the AO. AO accordingly considered the purchases from JBD Enterprises to be bogus and made addition of Rs.4,11,18,717/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who directed AO to restrict the addition to Rs.5,00,000/- instead of Rs.4,11,18,717/- made by the AO by observing as under :

"5. I have duly considered the submissions of the appellant. The AO noticed that the assessee company had made purchases of s.4,11,18,717/- from M/s. J.B.D. Enterprises and amount of Rs.25,10,979/- was shown as outstanding as on 31.03.2011. According to the AO, the said party was enlisted as a hawala operator by MVAT authorities. The AO therefore came to conclusion that transactions in question were not genuine. The AO also issued notice u/s 133(6) to the said supplier however it was returned un-served by the postal department with the remarks "incomplete address". The AO after verification of purchase bills noticed that movement of goods was in doubt as the assessee failed to furnish transport bills, delivery challans, lorry receipts, weighment slips, toll receipts etc. The assessee company informed the AO that the notice issued by the department was returned by the postal department since the supplier had shifted its office. It was also contended that the supplier was not listed as 'hawala dealer' by VAT authorities. Further all the payments to M/s. J.B.D. Enterprises were made through banking channels. The AO also found out that the purchases of M/s. J.B.D. Enterprises from M/s. Worth Traders were not genuine as Shri Jaykumar Vasudeo Makhwana, Proprietor of M/s. Worth Traders had admitted before the Sales Tax Department that he had never sold any goods to M/s. J.B.D. Enterprises and only bills were provided to it. Similarly the other concerns i.e. Allied Corporation, Zenith Trading Corporation, Viresh Sales Corporation, Harshil Enterprises & Sahajanand Enterprises, from whom M/s. J.B.D. Enterprises had made purchases, were also listed as hawala dealers. The AO also obtained bank statements of M/s. Worth Traders and M/s. Harshil Enterprises respectively u/s 133(6) of the Income-tax Act from Saraswat Bank, Bhayander (West), Thane and Union Bank of India, Thane respectively. On verification of these bank accounts, it was noticed that, in some cases amounts given by the assessee were deposited by the supplier in his bank account and subsequently the cheques were declared in the accounts of other hawala dealers, therefore, the entire transactions were held to be not genuine. Since

M/s. Worth Traders was named as a hawala dealer by VAT department therefore the AO held that purchases made from M/s, J.B.D. Enterprises were also not genuine. The AO therefore concluded that entire purchases of Rs.4,11,18,717/- made from M/s. J.B.D. Enterprises were bogus and coupled with circumstantial evidence, the addition was made to the income of the assessee company. On careful consideration of facts and circumstances in the present case, I am inclined to accept the arguments of the appellant company. It is not in dispute that M/s. J.B.D. Enterprises was not named as "suspicious dealer" by the MVAT Authorities. Though few of its suppliers namely M/s. Worth Traders, Mumbai, Prop. Jaikumar Vasudeo Makhwana, Allied Corporation, Zenith Trading Corporation, Viresh Sales Corporation, Harshil Enterprises & Sahajanand Enterprises, were listed as hawala dealer from whom purchases of Rs.1,57,80,536/- had been made yet its entire purchases of Rs.34,49,48,575/- in A Y 2011-12 could not have been treated as Hawala entries/accommodation bills. Even otherwise, only 4.57% of its total purchases were tainted. Consequently its entire sales of Rs.35,38,12,818/- including that of Rs.4,11,18,717/- to the appellant company could not have been dubbed as hawala sales. In other words, its sales to the extent of Rs.33,80,32,282/- were genuine. There is no material on record to suggest that goods allegedly purchased from M/s. Worth Traders, Allied Corporation, Zenith Trading Corp., Viresh Sales Corporation, Harshil Enterprises & Sahajanand Enterprises, had been sold to the appellant company or in other words accommodation bills without actual delivery of material had been passed on to appellant company. On the other hand, the counsel of the appellant has stated that receipt of goods were duly recorded in Excise Records and utilized for production of finished products. M/s. J.B.D. Enterprises Prop. Neeraj Tilakraj Garg is still doing its business. Its VAT, registration number is still active. It is filing its VAT returns and Income Tax returns regularly. The appellant company is manufacturing M. S. Ingots which is a excisable commodity and there is full control over its production. The appellant company is maintaining statutory Excise records. There is another angle to the present controversy. The appellant firm had purchased M. S. Scrap worth Rs.4,11,18,717/- from M/s. J.B.D. Enterprises in the period between November to March, 2011. In the Annexure-B & C enclosed with the assessment order, the AO had himself worked out consumption of M. S. Scrap at 6583.690 MT for the period i.e. November, 2010 to March, 2011. The average yield of M. S. Ingots was shown at 92% . Considering the burning loss, it would mean that for production of 1 MT of finished goods (1000 kg), there would be standard requirement of 1080 kg of raw material. In these facts and circumstances of the present case, the assertion made by the AO about bogus purchases has been rendered useless and redundant. It is undisputed fact that production can't happen without consumption of raw material. In view of quantitative tally verified by the AO for suppressed production as per Annexure-A of the assessment order, there remains no question of bogus purchases. The AO has not been able to controvert the above finding of the appellant. The AO is blowing hot and cold at the same time. Moreover M/s. J.B.D Enterprises being a trader had shown corresponding sales of material so purchased from hawala dealers i.e. M/s. Worth Traders, Mumbai, Prop. Jaikumar Vasudeo Makhwana, Allied Corporation, Zenith Trading Corporation, Viresh Sales Corporation, Harshil Enterprises & Sahajanand Enterprises. It would therefore imply that M/s. J.B.D. Enterprises would have actually purchased the material in cash from the open market and only bills were taken from the alleged hawala dealers. The various documentary evidences in respect of this supplier namely, copies of invoices, ledger extracts, confirmations, bank statements showing payments through banking channels, copies of Income Tax returns, copies of VAT returns, TIN details and consumption of raw material and payment of excise duty on finished goods could not be brushed aside as done by the AO. Accordingly the inference drawn by the AO that purchases of Rs.4,11,18,717/- were bogus, is not supported by the

material placed on record. Moreover in the other case namely M/s. Govindam Metal & Alloys Pvt. Ltd. for AY 2011-12, on identical facts, the AO had estimated profit of 20% on such bogus purchases whereas in the present case, the entire purchases have been added back. Therefore the addition of Rs.4,11,18,717/- made by the AO also suffers from inconsistent stand. However, the alleged supplier did not respond to the notice U/s.133(6) issued by the AO. The alleged supplier has also taken accommodation entries from the hawala dealers though one to one correlation is not possible. Therefore to plug possible leakage of revenue and meet ends of justice, a token disallowance of Rs.5,00,000/- is sustained. I accordingly direct the AO to restrict the addition to Rs.5,00,000/- on this account instead of Rs.4,11,18,717/- made by him. This ground of appeal is partly allowed.”

Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal before us.

8. Before us, Ld.D.R. supported the order of AO and submitted that Ld.CIT(A) has sustained the addition to the extent of Rs.5 lakhs. He submitted that Pune Tribunal in the case of M/s. Chhabi Electricals Pvt. Ltd. Vs. DCIT and others (in ITA No. 795/PUN/2014 for A.Y. 2010-11 dated 28.04.2017) and in other similar cases has upheld the addition to the extent of 10% of the purchases. He therefore submitted that similar directions to be given in the present case.

9. We have heard the Ld.D.R. and perused the material on record. The issue in the present case is with respect to making addition of Rs. 4,11,18,717/- to the total income on account of bogus purchases. We find that AO in the order has noted that assessee had failed to prove the entire purchases amounting to Rs.4,11,18,717/-made from M/s. J.B.D. Enterprises and accordingly the addition was made by AO. The addition was restricted by Ld.CIT(A) to the extent of Rs.5 lakh. We find that various scenarios of bogus purchase issue was adjudicated in series of decisions by the Pune Benches of Tribunal with lead order in M/s. Chhabi Electricals Pvt. Ltd. Vs. DCIT and others (in ITA No.

795/PUN/2014 for A.Y. 2010-11 dated 28.04.2017), wherein the Co-ordinate Bench of the Tribunal had upheld the addition of 10% of the bogus purchases over and above G.P. shown. In view of the aforesaid facts and following the decision of the Co-ordinate Bench of the Tribunal in the case of Chhabi Electricals (supra) and in view of the submission of Ld.D.R., we uphold the addition to the extent of 10% of such purchases made by AO over and above G.P. shown. We therefore direct accordingly.

Thus, the ground No.3 of the Revenue is partly allowed.

10. **In the result, the appeal of Revenue is partly allowed.**

Order pronounced on 4th day of April, 2019.

Sd/-

(SUSHMA CHOWLA)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 4th April, 2019.

Yamini

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-1, Aurangabad.
4. Pr. CIT – I, Aurangabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “बी” / DR, ITAT, “B” Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.