

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

**ITA No.2525/M/2017
Assessment Year: 2012-13**

ACIT, Cir-27(1), Room No.415, 4 th Floor, Tower No.6, Vashi Station Complex, Mumbai – 400 703	Vs.	Shri Dharmesh Rajendra Chokshi, 175-176, Neelkanth Villa, Garodia Nagar, Ghatkopar (East), Mumbai – 400 077 PAN: AABPC7653A
(Appellant)		(Respondent)

Present for:

Assessee by : Shri D.G. Pansari, A.R.
Revenue by : Shri Abhay Agarwal, D.R.

Date of Hearing : 06.06.2019
Date of Pronouncement : 24.06.2019

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the Revenue against the order dated 25.01.2017 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2012-13.

2. The only issue raised by the Revenue in the various grounds of appeal is against the deletion of addition of Rs.2,43,97,120/- by Ld. CIT(A) as made by the AO under section 40A(2)(b) of the Act, 1961.

3. The facts in brief are that the assessee filed the return of income on 24.09.2012 declaring income of Rs.27,39,050/- which was processed under section 143(1) of the Act. Thereafter

the case of the assessee was selected for scrutiny and during the course of assessments proceedings the AO noticed from the perusal of tax audit report that assessee has made purchases of Rs.4,48,55,000/- from M/s. Raju Steel Corporation which are covered by the provisions of section 40A(2)(b) of the Act. Accordingly, the assessee was asked to submit the comparative rates of purchases from the above mentioned sister concern vis-à-vis other parties which was submitted by the assessee vide letter dated 17.03.2015. However, the AO rejected the same by observing from the details filed by the assessee that the assessee has made purchases from third parties at a very low rate whereas the purchases from the sister concern made at a higher price or vice versa and ultimately an addition of Rs.2,43,97,120/- was made to the income of the assessee on the grounds that transactions with the sister concern at not made at comparable and reasonable prices.

4. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee by observing and holding as under after taking into account the contentions and submissions of the assessee.

“7.1.4 From the quantitative details, it is observed that there are total 13 different varieties of iron sheets viz, C.R. Coils/sheets, G.P. Coil/sheets, hot rolled chequered sheets, H.R. sheets & coils, H:R. sheets-secondary, M.S. Angle, M.S. Beam, M.S. chanel, M.S. Flat, M.S, Pipe, M.S. Round and T.M.T. bars. The rates of purchase and sales vary significantly across various products. Further, profits also vary from 0.96% to 29.24% depending upon the products being traded. Therefore, the AO's action in picking up one product i.e., H.R. sheet- Secondary and applying the profit earned on it with other 12 different varieties of iron products cannot be accepted.

7.1.5 IT is further observed that although the AO in para 3 has started the comparison with the related party. M/s Raju Steel Corporation u/s 40A(2)(b) of the IT Act, he has only selected only five instances of purchases & sales to highlight that the GP works out to (-)6%. When there are hundreds of such instances of purchases and sales undertaken by M/s. Raju Steel Corporation, during the year under

consideration, selection of only 5 instances, that too of different variety of steel products, cannot be considered as a correct methodology.

7.1.6 Finally, no reason has been given by the AO in applying the GP @ 41.84% on the purchases made from other parties too in addition to the related party, M/s Raju Steel Corporation. Hence, in my considered opinion, the basis of addition is not only faulty but such estimation is totally unwarranted.

7.1.7 Considering the totality of facts and circumstances of the issue involved, the addition of Rs. 2,43,97,120/- on account of difference in GP is deleted. Hence, the ground of appeal no. 1 is **allowed.**"

5. The Ld. A.R. vehemently submitted before the Bench that the submissions of the assessee as made before the AO were not correctly appreciated by the AO by referring to the page No.15, 16 of the paper book which contained party-wise details of purchases and sales and percentage profit on those transactions. The Ld. A.R. submitted that the profit of the assessee ranges from 1.02% to 21.737% and the AO has only cherry picked the GP of those items on which the GP was highest that two of different items than purchased/sold from the related parties. The Ld. A.R. therefore submitted before the Bench that the order of AO is factually incorrect as it has not considered the correct instances of sale and purchase to evaluate the transactions with the related parties. The Ld. A.R. while relying heavily on the order of Ld. CIT(A) submitted that the Ld. CIT(A) has correctly analysed and appreciated the facts and passed a very reasoned and speaking order.

6. The Ld. D.R., on the other hand, relied on the order of AO and grounds of appeal by submitting that the assessee has been purchasing goods from the market at lower rate whereas at higher prices from the related party thereby suppressing the income of the assessee, The ld DR submitted that the transactions entered into by the assessee with the elated party

were made at unreasonable prices and therefore the order of Ld. CIT(A) may be reversed and that of AO may be upheld.

7. After hearing both the parties and perusing the material on record, we observe that the assessee has filed before the AO the statement of comparative purchases and sales with GP rates from related party vis a vis third parties. In order to demonstrate that the transactions with the related party has been made at the market rate which are reasonable and comparable, the assessee filed a chart showing GP on various items of purchases. The AO, however, cherry picked the instances out of that chart that too of very high margin and also of different items than dealt with by the assessee with the related parties. Whereas, on the other hand, the Ld. CIT(A) has properly analyzed and appreciated the submissions of the assessee and taken a very reasoned and correct view by holding that the transaction with the audited party are at market price and there is no suppression of any profit/income of the assessee. Under these circumstances, we are in agreement with the conclusion drawn by the Ld. CIT(A) that assessee has not made any transaction with the related parties which are covered under section 40A(2)(b) of the Act at a price which is lower than the market price. Accordingly, we uphold the order of Ld. CIT(A) and direct the AO to delete the addition.

8. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 24.06.2019.

Sd/-
(Ram Lal Negi)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated: 24.06.2019.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.