

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI D. KARUNAKARA RAO, AM AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA Nos. 114/PUN/2017

निर्धारण वर्ष / Assessment Year : 2007-08

Omsairam Steel & Alloys Pvt. Ltd.
C/o. Bansilal Kabra Advocate,
1st Floor, Ambika Market,
Jalna-431 203.
PAN : AAACO6232H

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,
Jalna Circle, Jalna

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos. 1369/PUN/2018

निर्धारण वर्ष / Assessment Year : 2007-08

Omsairam Steel & Alloys Pvt. Ltd.
C/o. Bansilal Kabra Advocate,
1st Floor, Ambika Market,
Jalna-431 203.
PAN : AAACO6232H

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,
Jalna Circle, Jalna

.....प्रत्यर्थी / Respondent

Assessee by : None

Revenue by : Shri Kiran Shinde

सुनवाई की तारीख / Date of Hearing : 11.09.2019
घोषणा की तारीख / Date of Pronouncement : 12.09.2019

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

These two appeals preferred by the assessee emanates from the separate orders of the Ld. CIT(Appeals)-1, Aurangabad dated 01.11.2016 and 15.06.2018 respectively for the assessment year 2007-08 as per the grounds of appeal on record.

2. These cases were heard together. Since issues common, facts are similar, these cases are being disposed of vide this consolidated order.

3. At the time of hearing, neither the assessee was present nor was represented by any Authorized Representative before us. That on checking of the records, it was found that the notice was duly served and the date of hearing was duly informed to the assessee. Further, the record demonstrates that even before the Ld. CIT(Appeals), the assessee was not appeared personally and he has filed only written submissions. The attitude of the assessee is therefore evasive in nature, evading the legal proceedings before the concern Authority. Therefore, **we propose to impose cost of Rs.10,000/- on the assessee in view of his evasive conduct and ignoring the date of hearing before the Tribunal in spite of being well informed. The assessee shall pay the cost in accordance with Rule 32A(2) of the Income Tax Appellate Tribunal Rules, 1963.**

ITA No.1369/PUN/2018
A.Y. 2007-08

4. We have recorded the submissions of the Ld. DR qua the assessee. In order to adjudicate the issue, as a matter of convenience, the Ld. DR referred to ITA No.1369/PUN/2018 as lead case. The Ld. DR submitted that in both the appeals, the issue is with regard to the addition made for clandestine removal of material. The observation of the Ld. CIT(Appeals) on this issue is as follows:

“.....However there was clandestine removal of goods during the period i.e. September, 2005 to December, 2006 falling in AY 2006-07 & 2007-08. As per the working given by the appellant company vide letter dated 13.05.2016, there was clandestine removal of goods at 230 MT valued at Rs.41,51,070/- in the current year instead of Rs.27,47,185/- taken by the AO. The GP @7.36% on unaccounted sales/clandestine removal of goods would work out to Rs.3,05,510/-. It is not in dispute that the appellant company has categorically admitted before DGCEI that entire raw material was purchased in cash. In the absence of relevant details for unaccounted purchases of raw material and rotation of funds, the unexplained investment relating to suppressed production is taken at 50% of Rs.41,51,070/- which works out to Rs.20,75,535/-. The total addition on this account including GP would work out to Rs.23,81,054/-. The counsel of the appellant has brought to my notice that it had offered additional income of Rs.19,78,995/- on account of clandestine removal of goods in the revised return of income and copy of the same has been placed on the record. It would therefore imply that the AO had made double addition to that extent. I accordingly direct the AO to restrict the addition on this account to Rs.4,02,059/- (Rs.23,81,054/- less Rs.19,78,995/-) instead of Rs.27,47,185/- made by him. This ground of appeal is partly allowed.

It is clear that the undersigned had confirmed addition to the extent of Rs.23,81,054/- on account of estimation of GP @7.36% and unexplained investment in the clandestine removal of goods. Out of above, the appellant company had been allowed relief to the extent of Rs.19,78,995/- as offered in the revised return of income and net addition of Rs.4,02,059/- was sustained”

5. We have perused the case records and heard the submissions made by the Ld. DR. We have given considerable thought to the findings recorded by the First Appellate Authority. We further find that on the same issue of

clandestine removal of material, the Co-ordinate Bench of the Tribunal, Pune in the case of ITA Nos. 284, 285 & 286/PN/2012 & Ors for assessment years 2006-07, 2007-08 & 2008-09 decided on 17.02.2016 has held and observed as under:

*“59.Admittedly, the assessee had offered additional income on the said clandestine removal of material without payment of Excise duty, which is to be added as income in the hands of the assessee. The learned Authorized Representative for the assessee fairly admitted that in case the said additional income has not been added while computing the income in the hands of the assessee for the respective years, the same may be directed to be added in the hands of the respective assessee in respective years. Accordingly, we direct the Assessing Officer to verify from the records for the respective years and include the additional income on account of such admitted clandestine removal of material without payment of Excise duty, by the assessee either before the Settlement Commission or before the Excise authorities, in the hands of the assessee. **Accordingly, we direct the Assessing Officer to verify from the records for the respective years and include in the hands of assessee, the additional income @ 4% or actual G.P. rate declared by the assessee for that year, whichever is higher, on value of such admitted clandestine removal of material without payment of Excise duty, by the assessee before the Excise authorities. Thus, the assessee is directed to file the requisite details of proceedings before the Excise authorities, before the Assessing Officer in order to compute the additional income in the hands of assessee in the respective years.**”*

That as per the aforesaid view of the Tribunal, the matter has been restored to the file of Assessing Officer for verification as per the directions contained therein. The Ld. DR conceded that as per the aforesaid decision of the Co-ordinate Bench of the Tribunal, Pune, in the instant case also, the matter may be restored back to the file of Assessing Officer for verification from the records for the year under consideration as per directions contained hereinabove.

6. Taking totality of facts and circumstances into consideration and the submissions of the Ld. DR, we set aside the order of the Ld. CIT(Appeals) and restore the matter back to the file of Assessing Officer for verification as per

directions given by the Pune Bench of the Tribunal in the case mentioned hereinabove (supra.).

7. In the result, **appeal of the assessee in ITA No.1369/PUN/2018 is allowed for statistical purposes.**

ITA No.114/PUN/2017
A.Y.2007-08

8. As facts and issues raised in ITA No.114/PUN/2017 are identical to ITA No.1369/PUN/2018, our decision rendered in ITA No.1369/PUN/2018 would **apply mutatis-mutandis** to ITA No.114/PUN/2017. Hence, in this case also, we set aside the order of the Ld. CIT(Appeals) and restore the matter back to the file of Assessing Officer for verification as per directions given by the Pune Bench of the Tribunal in the case mentioned hereinabove (supra.).

9. In the result, **appeal of the assessee in ITA No.114/PUN/2017 is allowed for statistical purposes.**

10. In combined result, **both the appeals of the assessee are allowed for statistical purposes.**

Order pronounced on 12th day of September, 2019.

Sd/-
D. KARUNAKARA RAO
ACCOUNTANT MEMBER

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 12th September, 2019.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Aurangabad.
4. The Pr. CIT-1, Aurangabad.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

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

		Date	
1	Draft dictated on	11.09.2019	Sr.PS/PS
2	Draft placed before author	11.09.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		