

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA**

Before: **Shri P. M. Jagtap, Vice President and  
Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A No.384/Kol/2018**  
(Assessment Year: 2014-15)

**ITO, Ward-25(1), Kolkata**

Appellant

Vs

**Smt. Santosh Devi**  
[PAN: AFDPD9287L]

Respondent

For the Appellant : Dr. A.K. Nayak, CIT-DR  
For the Respondent : Smt. Shikha Agarwal, ACA

Date of hearing : 15.07.2019  
Date of pronouncement : 01.10.2019

**ORDER**

**Shri S.S. Viswanethra Ravi, JM:**

This appeal by the Revenue against the order dated 26.12.2017 passed by the Commissioner of Income Tax (Appeals)-7, Kolkata ['CIT(A)'] for Assessment Year 2014-15.

2. The only issue to be decided is as to whether the CIT(A) is justified in adopting profit rate between 0.15% to 0.25% on the transaction value of Rs.45,35,35,629/- on account of commission income in the hands of assessee made under protective assessment by the Assessing Officer in the facts and circumstances of the case.

3. In the scrutiny proceedings, the Assessing Officer found large increase in sundry creditors account and sought explanation from the assessee. In reply, it was submitted that the assessee is engaged in trading in agricultural items and purchased items from M/s MSP Metallica Ltd. amounting to 45,35,35,629/- and claimed M/s MSP

Metallics Ltd. as a sundry creditors. It was also submitted that the assessee has sold the items purchased from M/s MSP Metallics Ltd. to M/s Hanuman Trading Co. valuing of Rs.45,40,23,735/- and the said M/s Hanuman Trading Co. shown as sundry debtor for the said amount. According to Assessing Officer, the transactions between M/s MSP Metallics Ltd. and M/s Hanuman Trading Co. with the assessee not reflected in her bank account, held that the assessee is a proprietor of some paper company which is providing accommodation entries to some other beneficiary companies and getting some commission from them and M/s MSP Metallics Ltd. or the assessee herself may be the beneficiary, added the above said amount in the hands of assessee under protective assessment vide its order dated 22.12.2016.

4. The assessee challenged the same before the CIT(A). The contention was made in the first appellate proceedings that the Assessing Officer of M/s MSP Metallics Ltd. accepted the sales and the assessment was made u/s 143(3) of the Act. The protective addition made in the hands of assessee is contrary to the opinion of the Assessing Officer concerning the assessee. Considering the same the CIT(A) determined the profit of Rs.11,33,839/- @ 0.25% on the value of transaction in the hands of assessee and deleted the addition made by the Assessing Officer under protective assessment for the reasons stated hereunder:

*5.I have considered the submission made by the assessee and perused the assessment order passed by the A.O, In the first instance, the addition made by the A.O of bogus sundry creditors is on protective basis, the ultimate beneficiary of which is M/s. MSP Metallics Ltd.*

*5.1 The A.O has made the addition of Sundry Creditors of Rs.45,35,35,629/- alleging them to be bogus. However, the A.O has not rejected the books of accounts of the assessee and has accepted the purchases and sales made by the assessee and also accepted the profit / loss on the sales & purchase of the goods. Hence it is a contrary stand taken by the A.O.*

*The A/R submitted that M/s MSP Metalics Ltd. is also assessed under section 143(3), where the AO has accepted the Sales, hence it is conflicting stand taken by the A.O by making protective addition.*

*5.2 It is also evident from the assessment order, that the purchase and sales transactions were made on credit by the assessee and the closing balance of the sundry debtors and sundry creditors were standing in the books of the assessee. Also no payments were made or received out of these balances.*

*5.3 Thus, from the above, it looks like that the transactions of purchases and sales entered into by the assessee are of the paper transaction only to provide accommodation entry. As such, it is a fit case to reject the books of the assessee as well as the purchase/sales, debtors/creditors. It is seen that in these kinds of transactions, only commission amount is charged in lieu of the entries provided. The transaction entered by the assessee is also one of these types only. Therefore, only commission amount must be the amount of income earned here.*

*5.4 I further find that the addition of entire sundry creditors made by the A,O cannot be sustained since the A.O has accepted both the purchases & sales made by the assessee. If the purchases are accepted, the sundry creditors cannot be treated as bogus as they are counterparts of the same transaction. Also, the party from which the purchases have been made is also assessed by him only where he has accepted the sales. Thus, the addition of Sundry Creditors cannot be sustained.*

*5.5 However, the fact that the authenticity of these transactions were not proved cannot be denied. The assessee indulged in providing accommodation entries of purchases & sales, must have charged certain percentage as commission. The said commission income earned by the assessee is to be added in the hands of the assessee. Generally, the basic percentage of commission charged in these kind of transactions/ ranges between 0.15% to 0.25% of the transaction value. Thus, commission income @0.25% of Rs.45,35,35,629/- i.e. Rs. 11,33,839/- is treated as the income earned by the assessee, the addition is restricted to Rs.11,33,839/- and the appeal on this ground is partly allowed."*

5. On perusal of the impugned order, we note that no evidence was brought on record showing that the addition involving impugned amount was made in the hands of M/s MSP Metalics Ltd. We note that it was contended before the CIT(A) that the assessment was made in the hands of M/s MSP Metalics Ltd. wherein the Assessing Officer has accepted the sales between M/s MSP Metalics Ltd. and the assessee. But however we find no documentary evidence or whatsoever filed before us showing the substantive assessment was made.

6. We find, the Coordinate Bench of this Tribunal in the case of **M/s. Manasi Exim (P) Limited** in ITA No. 787/KOL/2014 for A.Y. 2006-2007, on similar identical facts, remanded the matter to the file of CIT(A) for keeping it alive and pending till the outcome of the proceedings arising from the substantive assessment. The relevant portion of which is reproduced herein below:

*"6. In the present case, the Id. CIT(Appeals) did not await the outcome of the proceedings arising from the substantive assessment and since the said information was not forthcoming even after a considerable period from the concerned assessing officer, he proceeded to dispose of the appeal arising from the protective assessment by his impugned order and deleted the addition made on protective basis without awaiting the final outcome of the proceedings arising from the substantive assessment. Keeping in view the decision of the Hon'ble Gujarat High Court in the case of CIT -vs.- Surendra Gulab Chand Modi (supra), we hold that the Id. CIT(Appeals) was not justified in deleting the addition made by the Assessing Officer on protective basis in the year under consideration without awaiting for the final outcome of the proceedings arising from this substantive assessment. We, therefore, set aside the impugned order of the Id. CIT(Appeals) on this issue and remit the matter back to him for keeping it alive and pending till the outcome of the proceedings arising from the substantive assessment.*

*7. As regards the issue relating to the addition made on account of commission income allegedly received by the assessee for giving accommodation entries, we find that this issue is consequential to the issue relating to the addition made on protective basis on account of accommodation entries allegedly given by the assessee-company to the Mumbai based companies. Since the said issue is remitted back by us to the Id. CIT(Appeals), we also remit the consequential issue relating to addition on account of commission income back to the Id. CIT(Appeals) for deciding the same afresh. Grounds No. 1 & 2 of the Revenue's appeals for the year under consideration are accordingly treated as allowed for statistical purposes."*

7. In view of the findings of Co-ordinate Bench in the case of M/s. Manasi Exim (P) Limited (supra), we remand the matter to the file of CIT(A) to adjudicate the grounds keeping the same alive till the outcome of proceedings arising from the substantive assessment. Thus, grounds raised by the Revenue are allowed for statistical purpose.

8. In the result, the appeal of Revenue is allowed for statistical purpose.

Order pronounced in the open court on 01.10.2019.

**Sd/-**  
**[P. M. Jagtap]**  
**Vice President**

**Sd/-**  
**[S.S. Viswanethra Ravi]**  
**Judicial Member**

Dated : 01.10.2019  
Place : Kolkata  
RS, Sr.PS

Copy of the order forwarded to:

1. Appellant –ITO, Ward-25(1), Kolkata.
2. Respondent – Smt. Santosh Devi, 3/113/1, Azadgarh, Tollygunge, Kolkata – 700040.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

By order,  
Assistant Registrar,  
ITAT, Kolkata