

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCH 'B', JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
Before : Shri Vijay Pal Rao, JM & Shri Vikram Singh Yadav, AM

आयकर अपील सं./ITA No. 612/JP/2019  
निर्धारण वर्ष/Assessment Year : 2013-14

M/s. Agrasen Engineering Industries Pvt. Ltd G-516 to 518, Road No.9A, VKI Area Jaipur	बनाम Vs.	The ACIT Circle – 4 Jaipur
स्थायी लेखा सं./जीआईआर सं./ PAN/GIR No.: AABCA 3401 D		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Vijay Goyal, CA  
राजस्व की ओर से/ Revenue by : Smt. Runi Paul, JCIT- DR

सुनवाई की तारीख/ Date of Hearing : 12/12/2019  
घोषणा की तारीख/ Date of Pronouncement : 17 /12/2019

आदेश/ ORDER

PER VIJAY PAL RAO, JM

This appeal by the assessee is directed against the order of Id. CIT(A), Ajmer dated 11-03-2019 for the Assessment Year 2013-14. The assessee has raised the following grounds.

“1. On the facts and in the circumstances of the case and in law the Id. CIT(A) erred in not admitting the additional evidences submitted by the assessee without considering the circumstances for filing the same and also the evidence in support of such circumstances.

2. That the order of the Id. CIT(A) confirming the addition made by the AO is arbitrary, whimsical, capricious preserve and against the law and facts of the case. The order of the Id. CIT(A) in this

regard deserves to be set aside and addition made by the AO deserves to be deleted.

3. On the facts and in the circumstances of the case and in law the Id. CIT(A) erred in confirming the addition of Rs. 1,66,18,640/- made by AO on account of alleged undisclosed sale of scrap which remains with job workers.

4. On the facts and in the circumstances of the case and in law the Id. CIT(A) erred in confirming the addition of Rs. 2,74,358/- made by the AO by applying provisions of Section 14A of I.T. Act on account of investment made in shares and mutual fund.”

2.1 The Ground Nos. 1, 2 and 3 are regarding the addition made by the AO on account of undisclosed sale of scrap which was sustained by the Id. CIT(A) without admitting the additional evidence submitted by the assessee.

2.2 The assessee is a company and engaged in the business of manufacturing and job work of automobile components including ball bearings. The assessee filed its return of income on 24-09-2013 declaring total income of Rs. 6,75,51,674/-. During the course of assessment proceeding the AO noted that as per RG-1 stock register, the assessee has shown the sale of scrap at Rs. 3,31,02,840/- whereas the assessee in its books of accounts has shown the sale of scrap at Rs. 1,64,84,200/-. Therefore, the AO observed that the assessee has shown sale of scrap less by Rs.1,66,18,640/-. The AO asked the assessee to explain this discrepancy. In response to this, the assessee submitted that the sale of

M.S. Scrap as per books of accounts of the assessee is Rs. 1,64,84,200/- while as per RG-1, it is Rs. 3,31,02,840/-. The reason of the said difference of Rs. 1,66,18,640/- was explained by the assessee that the scrap generated during the production by the job workers remained with the job workers who are beneficial of the said scrap and it is a part of job cost to the assessee. The Excise Department collects the duty of such scrap from the assessee which remains with the job workers. Therefore, the assessee has to show the value of scrap which remains with the job workers in RG-1 register. The AO was not satisfied with the explanation of the assessee and asked the assessee to prove that the scrap remains with the job worker and they show it in their income. The assessee against explained the fact that there is a consistent practice where assessee is getting the work done from the job workers and assessee is also doing job work for outside parties. The scrap generated during the job work on the material received from outside parties is also remained with the assessee and the assessee has shown the income from sale of such scrap. Similarly, the scrap generated by the job workers while doing assessee's job remains with them and they also account for the same in their books of account. This practice is consistent for the last many years. The assessee has also referred to the decision of this Tribunal for **the**

**Assessment Year 2009-10** wherein identical issue was considered and decided in favour of the assessee. The AO was not impressed with the explanation of the assessee and made an addition of differential amount of Rs. 1,66,18,640/- on account of undisclosed sale of scrap.

2.3 The assessee challenged the action of the AO before the Id. CIT(A) and contended that the assessee has filed the relevant materials and supporting documents to show that scrap generated by the job workers remained with job workers and was never received back by the assessee as it is a consistent practice in this filed. The assessee has also filed an application for admission of additional evidence alongwith paper books in two sets. The Id. CIT(A) declined to admit the additional evidence sought to be filed by the assessee. However, written submission of the assessee was forwarded to the AO for remand report. No remand report was filed by the AO. The Id. CIT(A) finally confirmed the addition made by the AO on this account.

2.4 Before us, the Id.AR of the assessee submitted that during the course of assessment proceeding , the assessee produced various replies and there is no allegation in the assessment order that any of the queries raised by the AO or any documents required by the AO were not submitted by the assessee. The Id.AR of the assessee has referred to the

proceeding sheets of the assessment and submitted that the AO after receiving replies to the queries as well as documents, has not raised further query on this issue but only asked to file relevant details in respect of Query Nos. 9, 25 & 26. Thus apart from the details sought under Query Nos. 9, 25 & 26, no other query was raised by the AO. The Id.AR has pointed out that the assessee has duly produced all the relevant details regarding these queries which are also available on record and filed in the paper book. Thus when the AO was satisfied and has not raised any further query or asked the assessee to produce any particulars and supporting evidence then the disallowance of claim of the assessee and making addition on the ground that the assessee has not produced confirmations and audited accounts of these job workers to show that the scrap remained with the job workers and they have shown the income from sale of said scrap as necessitated for filing the evidence in the shape of additional evidence before the Id. CIT(A) to satisfy the said requirements as raised by the AO while making the addition. Thus the Id.AR of the assessee has submitted that the additional evidence is nothing but only in response to the reasons given by the AO for making addition which was never raised during the assessment proceeding. The Id.AR of the assessee further contended that when the Id. CIT(A)

forwarded the entire record to the AO and called for remand report then the said additional evidence should not have been rejected. Once the AO was asked to submit the remand report but the AO has not filed any remand report till the passing of the impugned order by the Id. CIT(A). The Id.AR of the assessee submitted that the Id. CIT(A) has acted in arbitrary manner while rejecting the application for additional evidence under Rule 46A of Income Tax Rules. The Id.AR has pointed that since there was a change of Id. CIT(A) and the case was transferred from Id. CIT(A)-2, Jaipur to Id. CIT(A), Ajmer. Therefore, despite the AO was asked to submit the remand report, the Id. CIT(A), Ajmer rejected the application. The Id.AR of the assessee thus contended that even otherwise the issue is covered by the decision of this Tribunal dated 26-06-2015 in assessee's own case for the Assessment Year 2009-10 in ITA No. 758/JP/2012 (ACIT vs M/s Agrasen Engineering Industries Ltd.) which has been upheld by the Hon'ble Rajasthan High Court vide judgement dated 12-10-2017 in DBIT No. 193/2015 (Pr.CIT, Jaipur-II, Jaipur vs Agrasen Industries Ltd., Jaipur ). The Id.AR of the assessee further contended that when all the relevant records were produced before the AO as well as before the Id. CIT(A) showing the fact that scrap generated during the job work carried out by the job workers remained with them

and was not received back by the assessee. Therefore, entries were made in the RG-1 register. It is not an actual sale of scrap to the job workers. The Id.AR of the assessee referred to RG-1 register and submitted that there is a clear entries of the scrap of job with all the particulars of job workers. Therefore, the stock register itself shows that scrap was with the job workers and it is not a sale to the job workers but it remained with the job workers as practice in this trade. The AO has not doubted the sale of scrap by the assessee generated from the job work done for the outside parties. Therefore, it is an arrangement between the parties that scrap generated during the job work will remain with the job workers. It is pertinent to note that excise duty is paid on such scrap as per excise laws and said amount of scrap is specifically shown in the RG-1 as required under the excise laws. The Id.AR of the assessee further submitted that the assessee has produced the confirmations from the job workers as well as the financial accounts of the sister concern M/s. Alankar Automotive Pvt. Ltd who had received the amount of rs69,52,939/- out of the job work receipt of Rs. 82,43,556/-. Thus the said party was doing job work for the assessee and also showing the sales /stock of scrap generated during the course of job work. The production of these evidences clearly establishes that the scrap generated during the course of job work by job

workers remained with them and it was sold by them. The Id.AR of the assessee also referred to the confirmations of the job workers filed by the assessee alongwith affidavits and return of income. Once the job workers have accepted and admitted these facts that the scrap generated during the course of job work remained with them and they have included the sale of scrap in their return then there is no materials or facts brought on record by the AO to show that the assessee has sold such scrap out of the books of accounts. Thus the Id.AR of the assessee submitted that the addition made by the AO and sustained by the Id. CIT(A) may be deleted. The Id.AR of the also referred to the assessment order for the Assessment Year 2012-13 passed u/s 143(3) of the Act on 28-01-2015 and submitted that the AO has accepted the fact that the scrap generated by the job workers remained with them and no such was addition made by the AO in the Assessment Year 2012-13.

2.5 On the other hand, the Id. DR submitted that despite the specific query raised by the AO and directing the assessee to produce the list of job workers for verification, the assessee has not produced the requisite details in support of the claim that the job workers had shown sales of scrap in their books of accounts. The Id. DR further contended that the assessee had produced the audit report from one concern namely M/s.

Alankar Automotive Pvt. Ltd. but there are other group concerns namely M/s. Aadhar Enterprises, Automotive Technologies and M/s. Scion Exports Pvt. Ltd. for which the assessee has not produced the audit report to show that they have shown the sale of scrap. Thus the assessee has failed to produce the supporting evidence to establish that the job workers have sold the scrap and shown the same in their books of accounts. The ld. DR relied on the orders of the authorities below and submitted that when the AO has called for the specific information/ details in order to verify the fact that job workers have sold the scrap and shown the same in their books of accounts then the failure on the part of the assessee to produce said supporting evidence clearly led to the conclusion that the scrap sale shown in the RG-1 is outside the books of accounts and unaccounted sales of the assessee.

2.6 We have considered the rival submissions as well as relevant materials available on record. The dispute is regarding the sum of Rs. 1,66,18,640/- shown by the assessee as scrap but claimed as generated during the course of job work by the job workers and it remained with them. We find that as per RG-1, the assessee has shown various quantities of scrap with job workers. Therefore, there are entries in the RG-1 regarding the scrap with job workers and the AO has taken these

quantities from the RG-1. It is not in dispute that in the Stock Register i.e. RG-1, the assessee has shown scrap with various job workers. However, complete details of job workers are not appearing in the stock register due to the format as provided under the excise rules. When the AO asked the assessee to explain the difference of the scrap of sale shown by the assessee in the books of accounts as well as the scrap shown in the RG-1, the assessee has initially explained the reasons for difference which is reproduced by the AO at page 2 in his assessment order, as under:-

“3. Sale of Scrap:- During the course of assessment proceeding it was found that RG-1 register sale of scrap was shown at Rs. 3,31,02,840/- whereas the assessee has shown sale of scrap in its books of accounts at Rs. 1,64,84,200/-. Therefore, it was observed that the assessee has shown sale of scrap less by Rs. 1,66,18,640/-. When asked for the difference, the assessee submitted on 3-12-2015, stating that:-

“4. *Details of sales of scrap as per books of accounts and as per excise record*:- During the year under consideration the sale of MS Scrap as per books of account of assessee is Rs. 1,64,84,200/- while as per RG-1 It is Rs. 3,31,02,840/-. The reason of difference of Rs. 1,66,18,640/- is that the assessee is sending goods for job work also and the scrap generated during production by job workers remain with job workers and the job workers remains the beneficial of that scrap and it is a part of job cost to the assessee . The excise department collect the duty of such scrap (which remain the job workers) from assessee, therefore, assessee has to show the value of scrap remain with the job workers also in RG-1 as the assessee paid duty on the same while it is not sales of assessee, therefore, not accounted for in books of accounts. For the excise purpose

*in RG-1, the assessee is crediting the scrap remain with job worker as 'duty debited against scrap remained with job workers'. The copy of RG-1 is enclosed herewith at Page No. 3 to 5 for your kind verification.'*

Therefore, the assessee has clearly explained that certain scrap shown in the RG-1 remained with the job workers. We find the explanation of the assessee is consistent about the entries of scrap in the RG-1 that the Excise Duty is required to be paid on such scrap as per law whether it is sold by the assessee or sold by the job workers. The Excise Duty is leviable because of the reasons that the assessee is a manufacturer of the goods and not the job workers. On further show cause notice issued by the AO regarding partywise details of job work and other relevant materials on the issue, the assessee again filed the replies as well as details. We find that as per the assessment proceeding sheet, the AO has clearly stated that requisite details were filed by the assessee except against Query Nos. 9,25 & 26. The AO has then again asked the assessee to produce the relevant details regarding query Nos. 9,25, & 26. The first query of the AO was about the details of excise duty paid on scrap and sale of scrap as per books of accounts. The second query was regarding furnishing the details of increase in purchase costs and decrease in the sale price. The second query was not related to scrap sale. As regards the

first query, the details were produced by the assessee and the AO thereafter has not raised any further query and nothing is appearing in the proceeding sheet. However, the AO finally made the addition of the differential amount which assessee has claimed that the scrap remained with the job workers. An identical issue was considered by this Tribunal in assessee's own case in ITA No. 758/JP/2012 for the Assessment Year 2009-10 vide order dated 26-06-2015 wherein this Tribunal has held as under:-

“(v) Apropos scrap generation, there is no evidence at all to show that vendors or sub-vendors returned the scrap which was sold by the appellant outside the books of account. As evident, the job workers had not returned the scrap to the appellant, sub vendors including M/s. Alankar Automobiles (P) Ltd. had shown income from sale of scrap of Rs. 3,30,000/- in its books of account. There being no evidence on the record to suggest that these sub-vendors had ever returned the scrap to assessee, no adverse inference can be drawn against the appellant merely on surmise and conjectures.”

During the year under consideration, one of the job workers of the assessee is the same i.e M/s. Alanakar Automotive Pvt Ltd. and the assessee has produced the all relevant documents including the audited report and the balance sheet to show that the said entity has shown the sale of scrap and major part of their job work receipt from the assessee. Thus when more than 80% of the receipts of the said entity on account of

job work are from the assessee then corresponding sale of scrap is also in respect of job work of the assessee. The AO has refused to accept said sale of scrap by the said entity on the ground that it is not established that sale of scrap is from job work of the assessee. It is pertinent to note that once the fact is established that job workers have shown the sale of scrap in their books of accounts then it is established that they are retaining the scrap generated during job work done by them. The said order of the Tribunal (supra) for the Assessment Year 2009-10 has been confirmed by the Hon'ble Jurisdictional High Court vide judgement dated 12-10-2017 (DBIT No.193/2015 in the case of Pr.CIT,Jaipur vs M/s. Agrasen Industries) and therefore, to the extent of finding that the job workers are showing sale of scrap in their books of accounts is now attained the finality. As regards the other job workers, the assessee has produced their confirmations as well as affidavits wherein they have accepted the retention of the scrap generated during the course of job work and sale of the scrap by them and not by the assessee. Thus it is an arrangement between the parties regarding the job work wherein the job work charges also include the scrap generated during the job work. Further the AO has not disputed the fact that the assessee itself has generated the scrap in the job work done for outside parties and also shown the sale of scrap in the

books of accounts. Once this practice of retaining the scrap by the job workers is accepted in case of the assessee then the scrap generated by the job workers who has done the job work for the assessee and retained the same, cannot be denied. For the Assessment Year 2012-12, the AO while passing the assessment u/s 143(3) dated 28-01-2015 has not made any such disallowance on account of scrap sale outside the books of account. It is also not in dispute that the assessee has been consistently showing the scrap with the job workers in the stock register being RG-1 for the excise purposes and therefore, it is not the first time that the assessee has adopted this practice. Accordingly, in view of the facts and circumstances of the case, when the assessee has produced all the relevant documentary evidence in support of the claim and also filed an application under Rule 46A of Income Tax Rules with the Id. CIT(A) then rejecting the said application by the Id. CIT(A) only on the ground that the assessee has not produced the said evidence before the AO despite sufficient opportunities is not justified particularly when all the material was forwarded to the AO alongwith written submissions for the remand report. Once the AO was asked to submit the remand report then the evidence produced by the assessee was also required to be examined by the AO. In the case in hand, the AO has not submitted any remand

report as pointed out by Id. CIT(A) while passing the impugned order. Therefore, non-furnishing of remand report cannot be taken against the assessee rather it is a ground for taking adverse inference that the evidence produced by the assessee is not disputed by the AO. Accordingly, in view of the above facts and circumstances of the case, we set aside the orders of the authorities below qua this issue and consequently the addition made by the AO on account of unaccounted scrap sale is deleted.

3.1 The Ground No. 4 of the assessee is regarding disallowance u/s 14A of the Act.

2.3 The AO has noted that the assessee has invested in the shares and also earned exempt income during the year under consideration. Accordingly, the AO invoked the provisions of Section 14A of the Act and made disallowance on account of interest expenditure as well as indirect administrative expenditure as per rule 8D of Income Tax Rules. The AO worked out the disallowance of interest expenditure at Rs. 1,66,530/- and Rs. 1,07,094/- on account of indirect administrative expenditure. The assessee challenged the said action of the AO before the Id. CIT(A) but could not succeed.

3.3 Before us, the ld.AR of the assessee stated that the assessee has not incurred any expenditure for earning exempt income as assessee was having its own interest free funds for investment in shares. He has pointed out that during the year under consideration the investment in shares has been reduced from Rs. 3,70,58,802/- to Rs. 1,10,78,725/-. Therefore, there is no use of borrowed funds for making investment during the year under consideration. Further, as per cash flow statement, the assessee is having more than sufficient funds. Even the assessee's profit during the year as well as in earlier year is much more than investment made in the shares. Thus the ld.AR of the assessee pointed out that there is no expenditure which can be attributable for making investment or earning exempt income. He has referred to the details of fund flow and pointed out that the assessee was having more than sufficient funds.

3.4 On the other hand, the ld. DR has submitted that the assessee has not given bifurcation of the fund, being assessee's own funds and borrowed funds, for the investment in shares. The ld. DR relied on the orders of the authorities below.

3.5 We have considered rival submissions as well as the materials available on record. The AO has given the details of the investment as on 31-03-2012 and 31-03-2013 as under:-

“(B) Average investment for exempt income as	
On 31-03-2012	Rs. 3,17,58,801.50
On 31-03-2013	Rs. 1,10,78,725.50”

Thus it is clear from the details given by the AO that during the year under consideration there is a substantial reduction in the investment in the shares. There is a sale of shares of more than Rs.2.00 crores during the year and therefore, it is clear that the source of investment made during the year is sale proceeds of the existing investment in the shares. We find that the assessee has sold the shares of Oil India Ltd. and purchased the shares of ONGC. The sale proceeds of shares of Oil India Ltd are much more than the investment in shares of ONGC. Further as per funds available with the assessee, it is clear that assessee's own funds are many times more than the investment in shares. Therefore, in these undisputed facts, no disallowance is called for on account of interest expenditure.

3.5.1 As regards the disallowance of indirect administrative expenditure, we find that there is churning in the investment portfolio during the year under consideration as the assessee has sold the shares of Oil India Ltd. and purchased the shares of ONGC. Therefore, there is a process of decision making at the highest level of management of the assessee for

selling the shares of Oil India Ltd. and purchase of shares of ONGC. Hence the disallowance on account of indirect administrative expenditure being 5% of average investment is justified. Accordingly, the addition made by the AO u/s 14A of the Act is sustained to the extent of Rs. 1,07,094/-.

4. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 17 /12/2019.

Sd/-  
( विक्रम सिंह यादव )  
(Vikram Singh Yadav)  
लेखा सदस्य / Accountant Member

Sd/-  
(विजय पाल राव)  
(Vijay Pal Rao)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur  
दिनांक / Dated:- 17 /12/ 2019

\*Mishra

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

1. अपीलार्थी / The Appellant- M/s. Agrasen Engineering Industries Pvt. Ltd. Jaipur
2. प्रत्यर्थी / The Respondent- The ACIT, Circle – 4, Jaipur
3. आयकर आयुक्त(अपील ) / CIT(A),
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.612/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar