

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

**BEFORE SHRI C.N. PRASAD, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.4696/Mum/2018
(Assessment Year :2010-11)**

**ITA No.4697/Mum/2018
(Assessment Year :2011-12)**

**ITA No.4698/Mum/2018
(Assessment Year :2012-13)**

**ITA No.4699/Mum/2018
(Assessment Year :2013-14)**

&

**ITA No.4700/Mum/2018
(Assessment Year :2015-16)**

M/s. Shekhawati Poly Yarn Ltd., Unit No.1102/1103, A Wing Express Zone Patel Vatika, Off W.E.Highway Malad (E), Mumbai – 400 097	Vs.	Dy. CIT-CC-2(2), Pratishtha Bhawan Mumbai
PAN/GIR No. AABCS5224N		
(Appellant)	..	(Respondent)

Assessee by	Shri J.P. Bairagra
Revenue by	Shri Sandeep Raj
Date of Hearing	06/02/2020
Date of Pronouncement	14/02/2020

आदेश / ORDER

PER M. BALAGANESH (A.M):

These appeals in ITA Nos.4696/Mum/2018, 4697/Mum/2018, 4698/Mum/2018, 4699/Mum/2018 & 4700/Mum/2018 for A.Y.2010-11,

2011-12, 2012-13, 2013-14 & 2015-16 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-48, Mumbai in appeal No.CIT(A)-48/I.T.147 to 150 and 152/DCCC-2(2)/2017-18 dated 30/05/2018 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 153 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 27/12/2017 by the Id. Dy. Commissioner of Income Tax, Central Circle-2(2), Mumbai (hereinafter referred to as Id. AO).

2. The only common issue involved in all these appeals is as to whether the addition on account of deemed unaccounted scrap sale could be made in the facts and circumstances of the case and whether the Id. CIT(A) was justified in reducing the said addition for each of the assessment years under consideration.

3. We have heard rival submissions and perused the materials available on record. We find that assessee is engaged in the business of manufacturing of Texturizing and Twisting Yarn having its factory at Silvassa and Head Office at Malad (East), Mumbai. There was a search and seizure action u/s.132 of the Act on 29/09/2015 at the residence of the Directors of the assessee company and parallelly survey action u/s.133A of the Act was conducted on the factory premises of the assessee company. During the course of survey u/s.133A of the Act at the factory premises of the assessee company, statement of the cashier of the assessee Mr. Suresh Kumar Ruia was recorded. The relevant portions of the said statement are reproduced in pages 2 and 3 of the assessment order. Survey team posed certain queries to the said cashier while recording the statement by asking to explain the details of the scrap sale made in cash. In response thereto, the cashier responded that the sale amount of scrap is generated by sale of scrap by the assessee to M/s.

Paresh Textiles, in support of which he gave the sample copies of tax invoices which are part of loose sheets in pages 61-64 of Annexure A-1 of impounded documents. It is pertinent to note that the scrap sale is liable for levy of excise duty. Survey team also asked the difference of Rs.7,51,327/- in cash balance on the date of survey between the physical cash balance found and the cash balance as per the books of accounts. This was sought to be explained by the cashier by stating that the excess cash found physically was due to certain scrap sales made out of the books by the assessee which are retained in the form of cash balance. Based on this, the Id.AO made addition towards unaccounted scrap sale by estimating the sale of scrap at 0.162% on total sales and after deducting the scrap sales declared by the assessee in the return of income, he made addition for the difference towards unaccounted scrap sales for various assessment years in appeal before us as under:-

AY	Total sales	Amount of scrap sale as per return	Estimated sale of scrap (0.162% of total sale)	Unaccounted scrap sales
2010-11	89,19,11,375	2,15,179	14,44,896	12,29,717
2011-12	147,31,61,885	4,11,516	23,86,522	19,75,006
2012-13	210,62,87,865	9,54,450	34,12,186	24,57,736
2013-14	244,67,86,959	14,80,281	39,63,795	24,83,514
2015-16	357,87,33,988	13,58,614	57,97,549	44,38,935

3.1. The percentage of scrap at 0.162% was worked out by the Id. AO by dividing the unaccounted cash receipts on account of sale of scrap of Rs.7,51,327/- for the months of July, August and September 2015 by total sales for the said three months i.e. Rs.46,40,38,395/- which worked

out to 0.162% and accordingly made addition of unaccounted scrap sales thereon.

3.2. We find that the Id. CIT(A) had however ignored the said basis of working of unaccounted scrap sales addition made by the Id. AO and proceeded to make the addition on a different footing. We find that the Id. CIT(A) had observed that the unaccounted scrap sales for three months is Rs.7.50 Lakhs approximately and hence the same for the whole year on extrapolation basis should be Rs.30 Lakhs. Accordingly, he estimated the total scrap sale to be Rs.30 Lakhs for A.Y.2015-16 and from that, reduced the scrap sales already accounted by the assessee and made addition for the remaining amount. We find that the Id. CIT(A) did reverse working and estimated the total scrap sale for each of the years in appeal before us on an estimated basis and made addition towards unaccounted scrap sale in the following manner:-

AY (A)	Estimation of income from sale of scrap (B)	Amount of scrap sale as per return of Income (C)	Additions confirmed by CIT(A) (B) - (C) = (D)
2010-11	14 lakhs	2,15,179	11,84,821
2011-12	20 lakhs	4,11,516	15,88,484
2012-13	24 lakhs	9,54,450	14,45,550
2013-14	28 lakhs	14,80,281	13,19,719
2015-16	30 lakhs	13,58,614	16,41,386

3.3. We find the only basis of making this addition towards unaccounted scrap sale was the statement recorded from the cashier of the assessee

company which was also confirmed by the Director of the assessee company when he was confronted with the statement given by the cashier. Barring this statement, no other material was found at the time of search or survey by the revenue. Hence, the sole issue that remains to be adjudicated is whether unaccounted scrap sale addition could at all be made in the facts and circumstances of the instant case on an estimated basis. It is pertinent to note that against the addition made by the Id. CIT(A) on estimated basis, no appeal has been preferred by the revenue before us. Hence, what remains to be adjudicated by us is whether the estimation of scrap sale was made in a just and fair manner by the Id. CIT(A) in the prevailing facts and circumstances of the assessee.

3.4. We find that the statement given by the cashier subsequently confirmed by the Director had been later retracted on 01/10/2015 by the Director by filing an affidavit which are enclosed in page 396 and 397 of the paper book. But we find that the Director in his original statement had given a complete modus operandi of generation of unaccounted income and its utilization in his various businesses. Hence, the source as well as the application of unaccounted income had been discussed in detail in the statement recorded from the Director.

3.5. We find that the only evidence that has been found in the course of survey by the survey team was excess cash found in the sum of Rs.7,51,327/- based on the cash books in the months of July, August and September 2015 which admittedly pertains to A.Y.2016-17. We find the Id. CIT(A) had considered Rs.7.5 Lakhs as the scrap sale of three months and had extrapolated the same for the whole year and arrived on the total scrap sale of Rs.30 lakhs for A.Y.2015-16, when the actual data pertains to A.Y.2016-17. Hence, the whole basis of placing reliance on a document which does not pertain to the year under consideration itself makes the addition on a weaker footing.

3.6. We find based on the estimation of scrap sale made for A.Y.2015-16 in the sum of Rs.30 lakhs, the Id. CIT(A) had back worked and arrived on the estimated scrap sale for Rs.28 lakhs for A.Y.2013-14; Rs.24 lakhs for A.Y.2012-13; Rs.20 lakhs for A.Y.2011-12 and Rs.14 lakhs for A.Y.2010-11. For none of these estimations, there was any basis furnished by the Id. CIT(A). However, considering the totality of facts and circumstances of the case and the survey conducted in the premises of the assessee, we hold that the assessee would be entitled for relief of 50% of the total additions made by the Id. CIT(A) ultimately and in our considered opinion, this would meet the ends of the justice. The Id. AO is directed accordingly.

3.7. We find that the assessee had explained the entire cash found during search and survey at various places as under:-

Cash found at Factory	7,94,900
Cash found at Office	2,000
Cash found at home	10,43,840
Total cash physically found	18,40,740

Balance as on Cash Book of assessee (SPYL)	15,37,727
Balance as per Cash Book of Kalpana Ruia	1,23,990
Balance as per Cash Book of Mukesh Ruia	53,535
Balance as per Cash Book of Mukesh Ruia HUF	1,25,488
Total cash as per Books of accounts	18,40,740

3.8. The aforesaid tabulation furnished by the assessee has not been controverted by the revenue before us. Hence, the entire cash found at the time of search and survey has been properly explained by the assessee with reference to the entries in the books of accounts. Considering this valid explanation given by the assessee, we find that the Id. AO had not made any addition towards cash found at the time of search and survey.

3.9. Accordingly, the grounds raised by the assessee are partly allowed.

4. In the result appeals of the assessee are partly allowed.

Order pronounced in the open court on this 14/02/2020

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Mumbai; Dated
KARUNA, *sr.ps*

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

14/02/2020

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai