



**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

**BEFORE SHRI. A. D. JAIN, VICE PRESIDENT
AND SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.362/ALLD/2008
Assessment Year: 2005-06

Chaudharana Steel Pvt. Ltd. 21/19, Mayo Road Allahabad	v.	ACIT Range II Allahabad
TAN/PAN:AAACC9888M		
(Appellant)		(Respondent)

Appellant by:	None
Respondent by:	Shri S. K. Madhuk, CIT (DR)
Date of hearing:	12 02 2020
Date of pronouncement:	19 03 2020

ORDER

PER T.S. KAPOOR, A.M.:

This is assessee's appeal against the order of the ld. CIT(A), Allahabad, dated 9/9/2008 for assessment year 2005-06.

The following grounds have been raised:

1. Because the Ld. CIT(A) has wrongly confirmed the addition of Rs.11,25,000/-, the Ld. CIT (A) without appreciating the facts, proceeded to confirm the addition. The addition of Rs.11,25,000/- on account of non-inclusion of excise duty on Finished Goods is wrong against the facts, illegal and deserves to be deleted.
2. Because the Ld. CIT (A) has failed to appreciate the facts and submissions made and proceeded to confirm the disallowance of Rs.29,66,586/- out of Freight expenses on account of non-deduction of Tax, the addition is illegal and deserves to be deleted .
3. Because the Ld. CIT(A) has without any basis without verifying the facts only on presumptions, has wrongly and

illegally confirmed the addition of Rs.85,60,245/- of advance received from customers

4. Because the Ld. CIT(A) has wrongly and illegally confirmed the addition of Rs.1,25,000/- out of Rs.2,85,620/- as unsecured loan.

2. None has appeared on behalf of the assessee, despite issuance of notice through RPAD, which has not returned unserved. However, we find that this appeal can be proceeded with in the absence of the assessee. Therefore, we proceed to dispose of the appeal after having heard the ld. D.R. and having considered the material placed on record.

3. The appeal was earlier dismissed for non-prosecution, vide Tribunal order dated 4/12/2009, which was recalled, vide Tribunal order dated 12/7/2018, passed in M.A. No.14/LKW/2016 and the appeal was listed for hearing on merits.

4. Ground No.1 relates to the action of the ld. CIT(A) in confirming the addition of Rs.11.25 lakhs, which the Assessing Officer had made on account of non-inclusion of excise duty in the closing stock of finished goods, though debited to the profit and loss account. The ld. CIT(A), while confirming this addition, ignored the submission of the assessee that such duty was not debited to the profit and loss account and therefore, it was not included in the value of closing stock. On the other hand, the ld. CIT(A), relying solely on the note as mentioned in the audit report, to the effect that liability of excise duty on finished goods at close, amounting to Rs.11.25 lakhs, has not been provided for and that correspondingly, the same has not been taken into account for valuation of finished goods at close, confirmed the

addition. We feel that the ld. CIT(A) has erroneously not rebutted the contention of the assessee that the said excise duty was not debited to the profit and loss account and it was so, that it was not included in the value of the closing stock, and the ld. CIT(A) has wrongly confirmed the addition merely on the basis of a note in the audit report. Therefore, we deem it appropriate to remit this issue to the ld. CIT(A), who should re-adjudicate the issue, in accordance with law, on affording due opportunity of hearing to the assessee.

5. Ground No.2 relates to the confirmation of the disallowance of Rs.29,66,586/- out of freight expenses on account of non-deduction of tax at source. The assessee had submitted before the ld. CIT(A), that the amount of freight paid for each individual vehicle was less than Rs.20,000/-. The assessee had requested to get the facts verified from the books of account, wherein, the vehicle number was also mentioned on the invoices. However, the ld. CIT(A) has confirmed the addition by holding that such a huge amount cannot be said to be belonging to small transporters, but it must be belonging to big transporters. The finding of the ld. CIT(A) is an observation based on surmise, without rejecting and, at the same time, not acceding to the request made by the assessee. Therefore, we deem it appropriate to set aside this issue too to the ld. CIT(A) for deciding the same afresh, in accordance with law, on affording due opportunity of hearing to the assessee.

6. Ground No.3 relates to the confirmation of addition of Rs.85,60,254/-, which the assessee had claimed to have received from the customers, as advances. We find that during the assessment proceedings, the Assessing Officer asked the assessee to produce the ledger and furnish the receipt and

details of the mode of receipt of these payments, which, the assessee did not comply with. The Assessing Officer observed that there were numerous cash deposits in the bank account of the assessee, which the assessee explained to be cash deposits out of the books of account. The Id. CIT(A) has confirmed this addition by holding that the assessee had not submitted the details as required by the Assessing Officer. The Id. CIT(A) has held that just by saying that cash deposits are recorded in the cash book, does not mean that the cash transactions were explained. We find that the Id. CIT(A) has confirmed the addition by making a bland observation that the explanation of the assessee as to the entries recorded in the cash book, is not the conclusive proof of the claim made by the assessee. This, however, is neither here nor there. This finding itself proves the addition being confirmed in the absence of any material brought on record by the Id. CIT(A). Therefore, we set aside the order of the Id. CIT(A) on this issue and restore the matter to his file to decide the same afresh as per law, on affording due opportunity of hearing to the assessee.

7. Ground No.4 is against confirmation of addition of Rs.1.25 lakhs, which the Assessing Officer had made on account of unsecured loan at Rs.1.25 lakhs received from Shri Atul Gupta. The Assessing Officer had observed that before issue of cheques, there were three fresh credits in the bank account of Shri Atul Gupta, for which, the assessee had not given any satisfactory reply. Before the Id. CIT(A), the assessee had stated that these were not cash deposits, but were bank transfers from the same bank. But the Id. CIT(A) has confirmed the addition by holding that even it is transfer from one account to another account, the question remained that what was the source of

deposit in the bank account. We find that the ld. CIT(A) has held that transferring money from one bank account to another, does not explain the source of money, which, in our opinion, is not a correct finding, in view of the fact that the assessee had claimed that the deposits were not in cash, but were bank transfer. Therefore, for this ground also, the order of the ld. CIT(A) is set aside and the matter is restored to the file of the ld. CIT(A) for deciding the same afresh in accordance with law, on affording due opportunity of hearing to the assessee.

8. In the result, for statistical purposes, the appeal of the assessee is treated as allowed.

Order pronounced in accordance with Rule 34(4) of the ITAT Rules, 1963, by putting on notice board on 19/3/2020.

Sd/-
[A. D. JAIN]
VICE PRESIDENT

Sd/-
[T. S. KAPOOR]
ACCOUNTANT MEMBER

DATED:19/03/2020

JJ:1302

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Assistant Registrar