आयकरअपीलीयअधिकरण, हैदराबाद न्यायपीठ
INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH

सुश्री सुषमा चावला, उपाध्यक्ष एवं श्रीअनिल चतुर्वेदी, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, VICE PRESIDENT AND MR. ANIL CHATURVEDI, ACCOUNTANT MEMBER

[THROUGH VIDEO CONFERENCING AT DELHI]

आयकरअपील सं. / ITA No.1431/H/2016
निर्धारण वर्ष/Assessment Year : 2006-07

M/s. Sree Rayalseema Green Steloy Ltd.,
1st Floor, G3, H.No.5-10-197A,
B&C, Reliance Krishna Apartments,
Hill Fort, Hyderabad – 500 004
PAN No. AAHCS 9760 M ..... अपीलार्थी/Appellant

Vs.

DCIT, Central Circle-3(1),
Hyderabad ..... प्रत्यर्थी/Respondent

अपीलार्थी की ओर से **/ Applicant by**	**:**	**Shri A. V. Raghuram, Adv.**
प्रत्यर्थी की ओर से **/ Respondent by**	**:**	**Shri Sunku Srinivasu, D.R.**

सुनवाई की तारीख/**Date of Hearing**	**:**	**18-06-2020**
घोषणा की तारीख/**Date of Pronouncement**	**:**	**29-06-2020**

आदेश/ORDER

PER ANIL CHATURVEDI, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order dated 21.03.2016 of the Commissioner of Income Tax (A)-10, Hyderabad relating to Assessment Year 2006-07.

2. The relevant facts as culled from the material on records are as under:

3. The assessee is a company which is stated to be engaged in the business of manufacture of Sponge Iron and Ingots. Assessee filed its return of income for A.Y 2006-07 on 01.12.2006 declaring loss of Rs.94,55,510/-. The case was selected for scrutiny and thereafter, assessment was framed u/s 143(3) vide order dated 29.12.2008 and the total loss was assessed at Rs.16,00,606/-. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 21.03.2016 in ITA No.0157/CIT(A)-10/2015-16 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now before us and has raised following grounds of appeals:

"1. The order of the learned CIT(A) is erroneous both on facts and law and is perverse to the extent it is prejudicial to the assessee.

2. The learned CIT(A) erred in sustaining the action of the AO in adding excise duty to the value of closing stock without following the mandate of the provisions of section 145A which requires such an addition, of duty to the purchase, and sale also.

3. The learned CIT(A) ought to have appreciated that central excise duty not be added to the closing stock which is not removed from the factory and the issue was already considered by the judicial authorities including that of Jurisdictional Tribunal and Hon'ble Supreme Court.

4. The learned CIT(A) erred in holding that Appellant did not file any details of remittance of excise duty before filing of return of income to deduction U/S.43B in as much as the Ld. CIT(A]

never had sought said details and he was only on the legal issue of the matter.

5. *The learned CIT(A)erred in sustaining the action of the AO in disallowing the compensation paid of Rs.1,50,000/- without appreciating that the amount was paid to a laborer involved in an accident while working in the factory.*

6. *The Learned CIT(A) erred in not admitting the additional grounds raised by the assessee during appeal proceedings The CIT(A) erred in taking a myopic view of the matter m holding that the Appellant has not satisfied the provisions of section 250 (5) of the Income Tax Act.*

7. *The CIT(A) ought to have appreciated that appeal proceedings before him extension of assessment proceedings and the admission of additional ground should have been considered in the light of the powers vested in CIT(A) under section 250 of the Income Tax Act.*

Any other ground that may be urged at the time of hearing."

4. Ground No.1 is general, requires no adjudication.

5. Ground No.2 to 4 are interconnected and thereafter, considered together.

6. During the course of assessment proceedings, AO noticed that assessee has not provided excise duty payable on closing stock of finished goods in respect of goods which are not cleared from factory. The assessee was asked as to why the excise duty payable on such closing stock of finished goods should not be included while valuing the closing stock inventory. Assessee *inter alia* submitted that as the finished goods have not left the

factory premises, the excise duty was not payable and therefore, it was not required to be included while valuation of closing stock. It was further submitted that in the case of assessee's sister concern (Shree Rayalseema Sugar & Energy Ltd.) for A.Y. 2006-07 similar addition was made by AO but the same was deleted by CIT(A) and the order of CIT(A) has been upheld by the Hyderabad Tribunal vide order dated 09.04.2010. The submissions made by the assessee were not found acceptable to AO. AO, thereafter, proceeded to make addition of Rs.69,48,395/- on account of excise duty payable. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who upheld the order of AO. Aggrieved by the order of CIT(A), assessee is now before us.

7. Before us, Learned AR reiterated the submissions before the AO and CIT(A) and further submitted that since the goods were in the factory and had not left the factory premises the question of inclusion of excise duty for valuation would not arise. He submitted that according to the Excise rules, the liability to pay duty arises only at the time of clearance of finished goods from factory. In support of his contention, he relied upon the decision of Hon'ble Madhya Pradesh High Court in the case of ACIT vs. D & H Secheron Electrodes (P) Ltd. reported in (2008) 173 taxman 188. He also relied on the decision of Hon'ble Apex Court in the case of CIT vs. Dynavision Ltd. (2012) 82 CCH

211 ISCC. Learned DR on the other hand supported the order of lower authorities.

8. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to consideration of excise duty payable for valuation of closing stock of finished goods. We find that assessee has been consistently claiming before the lower authorities that since the finished goods have not been cleared from factory, there is no liability for payment of Excise Duty as per Excise Regulations and therefore, the Excise Duty was not debited in the Profit and Loss account. It is further the submission of the assessee that it is following the same method of valuation in earlier and subsequent years. The aforesaid contentions of the assessee have not been controverted by the Revenue. We find that Hon'ble Madhya Pradesh High Court in the case of D & H Secheron Electrodes (P) Ltd. (supra) has held that unpaid excise duty on goods in stock which have not left the premises could not be added to the value of closing stock. We also find that Hon'ble Apex Court in the case of CIT vs. Dynavision Ltd. (supra) has also held so. In view of the aforesaid decisions, we are of the view that no addition is called for in the present case. **Thus, grounds of appeal of the assessee are allowed.**

Ground No.5

9. During the course of assessment proceedings, AO noticed that the assessee has paid compensation of Rs.1,50,000/- which was debited under the head "staff welfare expenses". The assessee was asked to produce evidence and supporting for the same. The assessee *inter alia* submitted that it was paid to one of the labourer's family who was engaged by the carrying out the factory work and who had met with an accident. The submission of the assessee was not found acceptable to the AO as the assessee had not furnished any evidence like adjudication order for such payment. AO also noted that the payment was not by a cross cheque. He accordingly, made the addition of Rs.1,50,000/-. Aggrieved by the order of AO, Assessee carried the matter before CIT(A), who upheld the order of AO. Aggrieved by the order of CIT(A), assessee is now before us.

10. Before us, Learned AR reiterated the submission made before lower authorities and further submitted that payment has been incurred for the purpose of business and it be allowed as a deduction. He, further submitted that Rules 6DD(h) of the Income Tax Rules also allows the payment of such sum. He, therefore, submitted that the payment be allowed. Learned DR on the other hand, supported the order of lower authorities and submitted that no evidence was submitted by the assessee before the

lower authorities and further as per Rule 6DD(h) of the Income Tax Rules, only the payment upto 50,000/- can be allowed. In the present case he submitted that the payment is Rs.1,50,000/- and therefore it cannot be allowed under Rule 6DD(h). The Learned AR in the rejoinder submitted that the matter may be remitted back to the AO as he at that moment does not have the details as to whether the payment was made to one single labourer or more than one labourer.

11. We have heard the rival submissions and perused the material available on record. The issue in the present ground with respect to payment of compensation stated to have been made to labourer and which has been disallowed by the AO. Before us, Learned AR submitted that the payment in cash could be allowed in view of the provision of Rule 6DD(h) of the Income Tax Rules. We find that as per Rule 6DD(h) of the Income Tax Rules, the payment made to an employee of the Assessee or the heir of such employee on account of the circumstances stated therein can only be allowed if the aggregate of the sums payable to the employee or his heir does not exceed Rs.50,000/-. In the present case from the order of AO it is seen that the payment has been made to a single person and it is an excess of Rs.50,000/-. We are, therefore, of the view that provision of benefit under Rule 6DD(h) of the Income Tax Rules cannot be made available to the

assessee. We, therefore, find no infirmity in the order of CIT(A) and **thus the Ground of appeal of the assessee is dismissed.**

Ground No.6 and 7

12. With respect to Ground No.6 and 7, Learned AR submitted that before CIT(A), assessee had filed additional ground wherein the AO has disallowed the interest of Rs.5,18,665/- on the amount of Rs.48,24,785/- being the alleged amount advanced to sister concern. Before us, Learned AR submitted that the additional ground filed by the assessee was not admitted by the CIT(A) and therefore, it was not adjudicated by him. The reasons for non-admission of the additional ground by CIT(A) was that assessee had failed to establish the omission to file the additional ground at the time of filing the appeal was not willful or unreasonable.

13. Before us, Learned AR pointed to the submissions made by the Assessee before CIT(A) and which are noted by CIT(A) in his order. On the merits of addition, from the submissions made by Assessee before CIT(A), he pointed out that the amount was advanced to the sister concern during the course of business and were for the purpose of business and therefore, the interest on such advances could not have been disallowed. As an alternate submission, it was submitted Rs. 48,24,785/- was given to

Shree Rayalseema Sugar and Energy Pvt. Ltd. for the business purpose and Assessee had also received Rs.20,75,350/- from it during the course of business. The net amount outstanding from the sister concern was thus only Rs.29,49,435/- and the disallowance of interest, if any, be made only on the net outstanding amount and not on the basis of gross amount of Rs. 48,24,785/-. He relied on the decision of Apex Court in the case of S. A. Builders Ltd. reported in [2007] 288 ITR 1 (SC). Learned AR, therefore, submitted that the matter may be remitted to the file of AO for his decision after verification. Learned DR on the other hand supported the order of CIT(A) and did not seriously opposed the prayer of Learned AR for remitting the matter back to AO.

14. We have heard the rival submissions and perused the material available on record. We find that though the additional ground with respect to the disallowance of interest was raised before CIT(A) but the same was not admitted and therefore not adjudicated by CIT(A). After considering the submissions, we are of the view that CIT(A) was not justified in not admitting the additional ground raised by Assessee for adjudication. We, therefore, direct that the issue be adjudicated by CIT(A). Before us, it is assessee's contention that the net amount outstanding from Shri Rayalseema Sugar and Energy Pvt. Ltd. is only Rs. 29,49,435/- and if any disallowance has to be made

the same be made, only on such net amount. We find that the alternate submission of disallowing the interest on the net amount has force in view of the fact that Assessee has advanced money and has also received money from its sister concern. Since we are restoring the issue to CIT(A) for adjudication, we direct him to consider the disallowance after considering the aforesaid submission of disallowance of interest on the net outstanding amount. We, thus direct accordingly. **Thus this ground is allowed for statistical purposes.**

15. **In the result, appeal filed by the assessee is partly allowed.**

Order pronounced in the open Court on day of 29th June, 2020.

Sd/-	**Sd/-**
(SUSHMA CHOWLA)	**(ANIL CHATURVEDI)**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

New Delhi/Dated: 29th June, 2020

*Priti Yadav, Sr. PS**

Copy of the Order forwarded to :

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A)*
4. *The Pr. CIT*
5. *DR, ITAT – Hyderabad*
6. *Guard File*

BY ORDER,

(Dy./Asst. Registrar)
ITAT, Hyderabad