

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

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 5722/MUM/2017
Assessment Year: 2013-14**

ITO-13(2)(2),
Room No. 147, 1st floor, Aayakar Vs. M/s SJZ Coldmills Pvt. Ltd.
Bhavan, M.K. Road, Office No. 229, Dheeraj Heritage, 2nd
Mumbai-400020. floor, S.V. Road, Santacruz (W),
Mumbai-400054.

Appellant

**PAN No. AAKCS3467J
Respondent**

Revenue by : Mr. V. Vinod Kumar, DR
Assessee by : None

Date of Hearing : 05/10/2020
Date of Pronouncement : 09/10/2020

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the Revenue. The relevant assessment year is 2013-14. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-21, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) the Income Tax Act 1961, (the 'Act'). Though the case was fixed for hearing on 08.01.2019, 04.06.2019, 13.11.2019, 18.02.2020 and 05.10.2020, neither the assessee nor its authorized representative appeared before the Tribunal on the above dates. As there is repeated non-compliance by the assessee, we are proceeding to dispose off this

appeal after examining the materials available on record and after hearing the Ld. Departmental Representative (DR).

2. The grounds of appeal filed by the Revenue read as under :

- 1 Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made without appreciating the fact that the assessee company failed to produce cogent evidences in support of its claim of sales returns of Rs.10,54,65,987/- from M/s Conros Steels Pvt. Ltd.
- 2 Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deciding the issue of sales turnover based on the submissions made by the assessee without affording an opportunity to the AO by way of remand proceedings and without obtaining data from M/s Conros Steels Pvt. Ltd., the purchaser of goods.

3. Briefly stated, the facts of the case are that the assessee filed its return of income for the assessment year (AY) 2013-14 on 20.01.2015 declaring total income of Rs.64,620/-. The assessee is engaged in business of trading in HR and CR coils/sheets and galvanized coils/sheets on wholesale basis. During the course of assessment proceedings, the assessee submitted before the AO that it had sold goods of Rs.17.26 crores to Conros Steels Pvt. Ltd. and due to improper quality, manufacturing defects etc. quality claims were raised by the customers and accepted by the assessee amounting to Rs.10,54,65,987/-. This was reflected under the head 'administrative expenses'. During the course of assessment proceedings, the assessee furnished before the AO copy of purchase order dated 25.04.2012 for Rs.18,00,00,000/- along with confirmation letter and intimation of Conros Steels Pvt. Ltd. to replace defective goods valued at Rs.17,26,65,299/-. In this letter, it was stated that

goods were received in the godowns of Conros Steels Pvt. Ltd. on 04.05.2012. Further, the assessee furnished copies of sample bills for the purchase material and stated that the closing stock is valued on the basis of "Accounting Standard-2" i.e. valuation of inventories on the basis of cost or market value whichever is lower. The AO noted that various other details called for were not filed. The AO further observed that most of the purchases were from M/s Krongner Impex Pvt. Ltd., Mankhurd, Mumbai and most of the sales were to Conros Steels Pvt. Ltd. As per the AO, the claim of loss was not justified since in the case of a trading concern, the goods purchased were sold immediately and there could not be any question of any defective goods. Further, the assessee had shown net sales of Rs.16,44,42,191/- whereas, gross sales to Conros Steels Pvt. Ltd. was Rs.18,00,00,000/-. If VAT of 5% was added to the gross value, it works out to Rs.17,26,64,300/-. Thus the AO observed that it was not clear as to how the assessee sold goods valued at Rs.18,00,00,000/- and why the same was not reflected in the audited P&L account of the assessee. As per the AO, the assessee failed to provide item-to-item purchase and sale with mapping of goods delivered to Conros Steels Pvt. Ltd. and mode of delivery, copies of delivery challans, goods testing report, third party report for valuing the claim of loss etc. Accordingly, the AO rejected the claim of the assessee that it had sold goods valued at Rs.17.26 crores to Conros Steel Pvt. Ltd. and that it had suffered loss on account of quality claims of Rs.10,54,65,987/-. As per the analysis of the bills provided by the assessee, the AO observed that the gross profit ratio shown was only 0.5%, whereas in this line of activity the gross profit ratio varies from 5% to 12%. Accordingly, the AO estimated the gross profit at 8% on the opening stock held and purchases made during the year.

The gross profit rate was estimated at Rs.3,29,83,359/-. Against this the AO allowed Rs.50,00,000/- as reasonable administrative expenses. Finally, the AO made an addition of Rs.2,79,83,359/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that the Ld. CIT(A) deleted the addition of Rs.2,79,83,359/- made by the AO with the following observations :

“4.5 I have considered the submissions carefully, it is noted that the sales inclusive of VAT is Rs.17,26,64,300/-. The appellant has reflected the sales net of VAT in its P & L account at Rs.16,44,42,191/- Further, though the purchase order was of Rs.18,00,00,000/-, the actual sales is somewhat lower, and the bill wise details of sales were furnished in support. Thus, there is no discrepancy as alleged by the assessing officer. The appellant has submitted that quality claims and discount, which should have been reflected in trading account, has erroneously been stated under administrative expenses. The nature of the item does indicate that the presentation was erroneous and should have been part of trading account. By not accepting the error, the Gross Profit in the trading account comes to an absurd 71%, which is obviously incorrect.

4.6. The appellant has rebutted the allegation of the assessing officer that details called for were not submitted. The assessing officer has observed that if goods were defective, the assessee would not have taken possession of it. However, the nature of business of assessee is of trading. The claim raised by Conros is on account of quality mismatch. If there was no quality mismatch, then it implies that sales were made at a gross profit of 71% which as already noted is absurd.

4.7. It is also noted that similar levels of gross profit has been shown by the appellant in AY 2008-09, 2009-10 and 2012-13, which have been accepted in the assessment orders u/s 143(3) which at least indicates the gross profit level of the

appellant. In contrast, the assessing officer has not given name of comparable whose gross profit is 8%. It is also noted that the assessing officer has applied this gross profit ratio not on the cost of sales but on opening stock and all purchases without considering the closing stock. This is evidently incorrect as it computes gross profit even on unsold stocks.

4.8. In my view the assessing officer does not have justifiable basis and is incorrect in rejecting the book results. Further, there is no basis for considering the gross profit @ 8%. Also, such gross profit cannot be applied on opening stock and purchases without reducing the closing stock. Lastly, the assessing officer has not even given credit for gross profit already disclosed by the appellant while estimating the assessed income. The estimated gross profit addition is therefore deleted.”

5. Before us, the Ld. DR submits that the assessee failed to file before the AO item-to-item purchase/sale with mapping of goods and discount allowed to each party and discount if any earned by it in such similar transactions. Therefore, it is stated by him that the AO has rightly rejected the claim of the assessee for discount allowed. Further, the Ld. DR states that the assessee failed to file before the AO copies of orders given by Conros Steels Pvt. Ltd. with specification of goods, copies of invoices issued by the assessee-company with specification of goods, correspondence made with Conros Steels Pvt. Ltd., copies of goods testing reports manufactured and supplied by the assessee-company to Conros. Reference is made by him to para 4.3 and 4.4 of the assessment order.

In view of the above, the Ld. DR submits that the AO has rightly estimated the profit and made the addition of Rs.2,79,83,359/-.

6. We have heard the Ld. DR and perused the relevant materials on record. The reasons for our decisions are given below.

The Ld. CIT(A) has mentioned at para 4.4 of his order dated 16.06.2017 that before him the assessee stated that the following details were submitted during the course of assessment proceedings before the AO:

- i. Basis of opening and closing stock (vide letter dated Nil, 4th submission)
- ii. Details of discount allowed of Rs.1,07,85,617/- (vide letter dated Nil, 4th submission),
- iii. Copies of orders given by Conros Steels Pvt. Ltd. (vide letter dated 30.03.2016, 5th submission),
- iv. Copies of invoice issued by assessee-company (vide letter dated 30.03.2016, 5th submission),
- v. Correspondence made with Conros Steels Pvt. Ltd. (vide letter dated 30.03.2016, 5th submission),
- vi. The gross profit ratio as compared to market rates.

Having considered the above submissions of the assessee, the Ld. CIT(A) has deleted the estimated gross profit addition made by the AO.

6.1 In the instant case, we find that the value of Rs.18,00,00,000/- is not sale to Conros Steel Pvt. Ltd. but it is purchase order given by the Conros Steel Pvt. Ltd. The assessee has sold goods worth Rs.17,26,64,300/- (gross) i.e. Rs.16,44,42,191 (net) and the same is reflected as sales in the P&L account. The assessee has submitted the purchase order vide letter dated 30.03.2016 before the AO. There is merit in the contentions of the assessee that if quality claim of Rs.10,54,65,987/- and the discount amounting to Rs.1,07,85,617/- are taken to the trading account, where they rightly belong as per the accounting principles,

then the rate of gross profit comes to 0.52% of sales which compares favourably with the normal rate of gross profit ranging from 0.1% to 0.5% in the assessee's business of trading in HR and CR coils/sheets and galvanized coils/sheets on wholesale basis.

We further notice that similar level of gross profit has been shown by the assessee in AYS 2008-09, 2009-10 and 2012-13, which has been accepted by the AO in the assessment passed u/s 143(3) of the Act.

6.2 The AO has estimated the profit of the assessee-company at 8% of opening stock held and purchases made during the year on the ground that the sale is not ascertainable with item-to-item purchase and stock held by the assessee. This is the incorrect method adopted by the AO. The AO has mentioned at para 2 of his assessment order dated 31.03.2016 that the AR of the assessee attended and filed details. A perusal of the order of the Ld. CIT(A), as mentioned earlier clearly indicates that the assessee filed before the AO the relevant details. In such a situation, the AO could have estimated the gross profit margin which is the surplus available out of the sales revenue, after subtracting the cost of goods sold. The correct method is indicated below:

$$\text{Gross Profit} = \text{Sales} - \text{COGS}$$

$$\text{Gross Profit Margin (GPM)} = (\text{Gross Profit} \times 100) / (\text{Sales})$$

The AO has resorted to an estimation which is not based on accounting principles. The AO has also disregarded the submissions made by the assessee during the course of assessment proceedings.

In view of the above factual matrix, we uphold the order of the Ld. CIT(A).

7. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced through notice board under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-

**(SAKTIJIT DEY)
JUDICIAL MEMBER**

Sd/-

**(N.K. PRADHAN)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 09/10/2020
Rahul Sharma Sr. PS

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai