

IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH "B", HYDERABAD  
(Through Virtual Hearing)

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER  
AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

ITA No. 679/Hyd/2019		
A.Y. 2009-10		
M/s. Cosmos Forgings Limited, Hyderabad. PAN: AABCG 4822 A	VS.	Deputy Commissioner of Income Tax, Circle-1(2), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri P. Murali Mohan Rao	
Revenue by:	Shri D. Srinivas, CIT-DR	
Date of hearing:	22/4/2021	
Date of pronouncement:	26/4/2021	

ORDER

This appeal is filed by the assessee against the order of the Ld. CIT(A)-1, Hyderabad in appeal No. 0247/2016-17/DCIT, Circle-1(2)/CIT(A)-1/Hyd/2018-19, dated 11/1/2019 passed U/s. 143(3) r.w.s 254 and U/s. 250(6) of the Act for the A.Y. 2009-10.

2. The assessee has raised ten grounds in its appeal and they are extracted herein below for reference:-

- "1. *The Ld. CIT(A) erred on facts and in law and thus the order passed by the Ld. CIT(A) is prejudicial to the interests of the assessee.*

2. *The Ld. CIT(A) ought to have appreciated the fact that vendors of the assessee directly delivers the products to third parties on behalf of assessee.*
3. *the Ld. CIT(A) erred in upholding the estimation of income of the assessee company made by A.O. at 1% of the turnover at Rs. 6,41,15,819/- which is not justified.*
4. *The Ld. CIT(A) ought to have appreciated the fact that the loss incurred on sale of iron and steel is due to the quality of material sold was not of the same quality of material sold; it was not of the same quality ordered by the customers and hence the sale price was slashed and that therefore the selling price is less than the purchase price.*
5. *The Ld. CIT(A) ought to have considered the fact that assessee has received the advances from its customers and hence it had to sell the steel at a price lower than the purchase price.*
6. *The Ld. CIT(A) erred in upholding the estimation of gross profit made by A.O. at the rate of 1% of the total sales, without verifying the average profit ratio of the appellant in earlier years or without verifying the industry averages.*
7. *The Ld. CIT(A) ought to have appreciated the fact that the books of account of the assessee have been audited U/s. 44AB and the A.O. has not found fault with the maintenance of books or any accounting infirmities and that therefore there is no reason for rejecting the book results.*
8. *The Ld. CIT(A) ought to have held that the estimate of income made by A is unsustainable as the A.O. has not specifically rejected the books U/s. 145(3) of the Act to resort to estimation of income.*
9. *The Ld. CIT(A) ought to have appreciated the fact that the assessee has furnished the details of Party wise purchases and `confirmation letters from parties from whom purchases have been made.*
10. *The appellant may add or alter or amend or modify or substitute or delete and / or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal.”*

3. At the outset, the Ld. AR submitted before us by stating that the Ld. CIT (A) has passed ex-parte order without providing proper opportunity to the assessee of being heard. It was therefore pleaded that the matter may be remitted back to the file of the Ld CIT (A) in order to provide one more opportunity to the assessee of being heard. Ld. DR, on the other hand, vehemently opposed to the submissions of the Ld.

AR and argued that sufficient opportunities had been provided to the assessee however, on the given dates of hearing, neither the assessee nor its Representative appeared before the Ld. CIT (A). Therefore the Ld. CIT (A) had no other option but to pass ex-parte order based on the materials available on record. Hence, it was pleaded that the order passed by the Ld. CIT(A) does not call for any interference.

4. We have heard the rival submissions and carefully perused the materials on record. On examining the facts of the case, We find merit in the submissions of the Ld. DR. The Ld. CIT (A) had posted the case on several occasions. However, none appeared on behalf of the assessee before the CIT(A) on the dates of hearing. Therefore, the Ld. CIT (A) was left with no other option except to adjudicate the appeal ex-parte. In this situation, We do not find much strength in the arguments advanced by the ld. AR. However, considering the prayer of the Ld. AR, the nature and quantum involved in the appeal, in the interest of justice, We hereby remit the matter back to the file of Ld. CIT (A) in order to consider the appeal afresh on merits by providing one more opportunity to the assessee of being heard. At the same breath, We also hereby caution the assessee to promptly co-operate before the Ld. CIT (A) in the proceedings failing which the Ld. CIT (A) shall be at liberty to pass appropriate order in accordance with law and merits based on the materials on the record. It is ordered accordingly.

5. In the result, appeal filed by the assessee is allowed for statistical purposes as indicated hereinabove.

Pronounced in the open Court on the 26<sup>th</sup> April, 2021.

Sd/-  
(P. MADHAVI DEVI)  
JUDICIAL MEMBER

Sd/-  
(A. MOHAN ALANKAMONY)  
ACCOUNTANT MEMBER

Hyderabad, Dated: 26<sup>th</sup> April, 2021

*OKK*

Copy to:-

- 1) M/s. Cosmos Forgings Limited, C/o. P. Murali & Co., Chartered Accountants, 6-3-655/2/3, Somajiguda, Hyderabad-500082.
- 2) Deputy Commissioner of Income Tax, Circle-1(2), 7<sup>th</sup> Floor, 'B' Blok, IT Towers, AC Guards, Hyderabad – 500 004.
- 3) the Commissioner of Income Tax (Appeals)-1, Hyderabad.
- 4) The Principal Commissioner of Income Tax-1, Hyderabad.
- 5) The DR, ITAT, Hyderabad
- 6) Guard File