

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 109/DEL/2016 (A.Y 2010-11)
(THROUGH VIDEO CONFERENCING)**

ACIT Central Circle-26, Room No. 323, 3 rd Floor, ARA Centre, Jhandewalan Extension, New Delhi (APPELLANT)	Vs	SSS Loha Marketing Pvt. Ltd. 18/1, Maharishi Devendara Road, 7 th Floor, Room No. 1A, Kolkata PAN:AAHCS3962M (RESPONDENT)
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Appellant by	Sh. Kumar Pranav Sr. DR
Respondent by	Sh. Rakesh Gupta, Adv

Date of Hearing	19.07.2021
Date of Pronouncement	10.08.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against order dated 20/10/2015 passed by CIT(A)-29, New Delhi for assessment year 2010-11.

2. The grounds of appeal are as under:-

“1. On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the addition of Rs.4,85,53,574/- on account of bogus sales made to M/s Punj Llyod Ltd., without appreciating the fact that the onus of establishing genuineness of transaction was on the assessee, which it failed.

2. On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the addition of Rs.4,05,53,574/- by holding that the Director has admitted that sales and purchases both are bogus

without appreciating the fact that the Director had retracted the above statement during the course of assessment proceeding itself, and also during the appellate proceeding, and had claimed that the transaction with M/s Punj Llyod Ltd was not genuine.

3. *On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in holding commission income of only 0.25% on the transaction with M/s Punj Llyod Ltd without any basis.*

4. *That the order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law.*

5. *That the grounds of appeal are without prejudice to each other.”*

3. During the year under consideration, the assessee company was mainly engaged in the business of trading in Iron Ore Fines etc. E-return of income declaring income of Rs. 1,39,61,784/- was filed by the assessee on 13/10/2010. Thereafter, the assessee filed revised computation of income declaring income of Rs. 1,41,88,970/-. Prior to filing return, a search and seizure operation u/s 132 of the Act was carried out on 17/3/2010 in case of Punj Llyod Group of case. During the course of post search enquiries, survey was conducted at the business premises of the assessee company on 30/5/2010. Subsequently, the case was selected for compulsory scrutiny in assessee's case. The Assessing Officer observed that the assessee has shown dividend income to the tune of Rs. 11,949/- and claimed the same as income. The Assessing Officer made disallowance of Rs. 62,957/- against the dividend income and interest income as per Rule 8D. Further, the Assessing Officer made addition of Rs. 4,05,53,574/- in respect of income from other sources which was surrendered by the assessee on account of bogus interest. On account of excess transaction to the tune of Rs. 3,03,226/-, the same was also added by the Assessing Officer. Thus, the income of the assessee was assessed at Rs. 5,51,08,070/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. DR submitted that the CIT(A) has not at all considered the factual aspects and simplicitor deleted the addition without taking cognizance of the admission of the Director that sales and purchases both are bogus. The Ld. DR further submitted that commission income of only 0.25% on the transaction with M/s Punj Lloyd Ltd. is quantified without any basis.

6. The Ld. AR submitted that the case of the assessee was identified as one of the entry providers to M/s Punj Lloyd and accordingly a survey was conducted in the premises of the assessee on 31/5/2010. During the survey statement of Shri Dilip Didwania, Director of the assessee company was recorded u/s 133A of the Act, in which he confessed that sales relatable to M/s Punj Lloyd Ltd. are just book entries and no book has been traded. The Assessing Officer asked the assessee to furnish the details of surrender made by the Director of the Company during the course of survey and its treatment in the books of account, after having discovered that no additional income has been offered by the assessee in its return on income. The Ld. AR filed synopsis which is produced herein below:-

“The sole issue in the present appeal is regarding the addition of Rs. 4,05,53,574/- made by the Ld. AO considering the sales made by assessee to M/s. Punj Lloyd Ltd. as bogus entries. On consequent appeal, Ld. CIT (A) concluded that both sales and corresponding purchases are mere book entries and thus will have no impact on the profitability of the appellant because both are duly entered in the books of accounts of assessee. Therefore, Ld. CIT(A) restricted the addition to Rs. 1,01,400/-, alleging that as per common practice while providing such bogus entries small percentage of such bogus entry is taken by entry provider as commission, over and above the amount, so it is held that assessee has charged commission @ 0.25% of Rs. 4,05,53,574/- against which assessee has filed the present appeal before Your Honours.

Against the deletion of Rs. 4,04,52,174/- revenue has filed the appeal.

The brief facts of the case are as under:-

Appellant is a company engaged in the business of trading of iron ore . During the impugned assessment year appellant sold 1350.108 MT Bars to M/s. Punj Lloyd Ltd for Rs4,06,37,894/-and corresponding purchases was made from M/s. Ramsarup Utpadak for Rs. 3,67,84,909/-. A search operation was conducted at the premises of M/s. Punj Lloyd Ltd. on 17.03.2010 and during the course of post search enquiries a survey was conducted at the business premise of the assessee on 30.05.2010 and during survey statement of director of assessee company Mr. Dilip Didawani was recorded.

***PB 61-62A** is the copy of statement of Mr. Dilip Didawani recorded during the survey.*

Solely on the basis of above mentioned statement Ld. AO formed a belief that impugned sales to M/s Punj Lloyd Ltd. are mere book entries and ignored all documentary evidences placed on record by assessee given as under

***PB 33** is the copy of tax audit report evidencing the quantitative reconciliation of the stock*

***PB 35** is the copy of transaction summary of sales made by assessee to M/s. Punj Lloyd Ltd. showing the CST tax was duly paid by assessee and also evidencing the delivery charges in respect of every transaction of sales made by assessee to M/s. Punj Lloyd Ltd.*

***PB 35A** is the copy of statement of purchases made by assessee from M/s Ramsarup Utpadak Ltd. evidencing that payment for all purchases have been made along with due taxes.*

***PB 35B-35D** is the copy of details of commercial taxes paid by assessee duly showing the sales made to M/s. Punj Lloyd Ltd. and delivery charges charged on the same.*

***PB 35F** is the copy of summary of sales under CST Act for 4 quarter reflecting name of M/s. Punj Lloyd Ltd.*

PB 35J-35L is the copy of details of party wise sales made by assessee company during the impugned assessment year.

PB 35M-35N is the copy of stock report duly showing the receipt of the stock from M/s. Ramsarup Utpadak Ltd. and issue of the stock M/s. Punj Lloyd Ltd.

PB 36 is the copy of details of delivery charges in respect of sales made by assessee to M/s. Punj Lloyd Ltd.

PB 39 is the copy of details of TDS deducted by assessee evidencing that due taxes have been deducted by the appellant in respect of delivery charges paid by assessee to M/s. Alok Transport Pvt. Ltd.

PB 47 is copy of ledger account of M/s Punj Llyod Ltd showing sale, receipts of payment and TDS on delivery charges.

PB 48-49 is the ledger account of Bank of Baroda showing the receipt of payment from M/s Punj Llyod Ltd are duly received in the impugned assessment year.

PB 50 is copy of bank statement of assessee showing the payments received from M/s Punj Lloyd Ltd via banking channels.

PB 52 is input VAT register showing the claim of input VAT on the purchases made by assessee from M/s Ram Sarup Utapadak in the impugned assessment year.

PB-53 is the copy of output VAT register showing due tax have been paid on sale made to M/s Punj Llyod Limited.

PB 55 is the ledger account of M/s Ram Sarup Utapadak showing the regularity of the transactions.

PB-56 is the details of payments made by assessee to M/s Ram Sarup Group during the impugned assessment year.

PB 57-58 is the copy of bank statement of the M/s Ram Sarup Utapadak showing the receipt of payment via banking channels from assessee company.

PB 59-60 is the copy of the bank statement of the assessee evidencing the

payment made by assessee via banking channels.

PB 61-62 is the copy of statement of director in which the said question was asked.

PB 77-81 is the copy of submission dated 17.09.2013 filed by assessee before Ld. AO duly submitting all the documents vehemently proving the genuineness of the transactions entered by assessee.

PB 81-131 is the copy of annual report containing balance sheet and profit and loss account of M/s. Ramsarup Industries Ltd. evidencing the complete details of address and contact details of all units including unit no. 2 i.e M/s Ramsarup Utpadak Ltd.

PB 132- 306 is the copy of complete trail of documents in respect of every transaction entered by assessee with M/s. Punj Lloyd Ltd., M/s. Ramsarup Utpadak Ltd. and M/s Alok Transport Pvt. Ltd.

Thus, in view of such overwhelming evidences it is more than proved that the sale made including one made to M/s Punj Lloyd Ltd. was genuine sale and impugned addition was based on incorrect facts.

The response of director of assessee company Mr. Mr. Dilip Didawani on question No. 4 (PB 62) was considered alleged surrender of undisclosed income on the behalf of assessee. Whereas a bare perusal of the same will show that no surrender was ever been made by on behalf of assessee company. Whereas Ld. CIT(A) duly pointed out the defect in the basis of by Ld. AO (para 10.9 at page 19 of order) that nothing has been found mentioned in the statement to conclude that additional income has been offered during the course of survey. Which itself signifies that the basis of addition is very devoid and in ignorance of facts and circumstances of the case.

Further, Ld. CIT(A) also in his order extensively relied on the statement of Mr. Dilip Didawani. Which is in ignorance of the fact that on being aware that the entire assessment proceeding are going on with the presumption that assessee surrendered its sale of Rs. 4,06,37,894/- made to M/s Punj Lloyd Ltd, assessee the retracted the shuffled statement of Mr. Dilip Didawani. As a

matter of fact the one and only basis of addition in the present case i.e the statement of director of assessee company was never made available to assessee company and assessee company came across such fact only after being show caused for making surrender of alleged undisclosed income.

PB 41 *is the copy of reply dated 19.02.2013 filed by assessee in response to show cause notice, requesting for the statement of director of assessee company PB42-46 the copy of reply filed by assessee in response to the show cause notice explaining that no surrender was ever made by director of assessee company and both the purchases and sales in connection to M/s. Punj Lloyd Ltd. are genuine.*

In this regard respectful submission of the appellant where nothing has been found during survey negating the claim of the appellant which is duly supported by voluminous evidences no addition can be made solely on the basis of statement during survey proceedings.

It is also held in the following judicial precedents.

Revision—Erroneous and prejudicial order—Assessment vis-a-vis disclosure during survey—Sec. 13 3A does not empower any ITO to examine any person on oath—Thus, the statement elicited during the survey operation has no evidentiary value—ITO did not accept the income declared by the assessee after the survey in a mechanical way, but applied his mind to various aspects of the matter before completing the assessment—Advances admittedly received by the assessee from two parties have been explained partly and the unexplained amount is telescoped in the income already disclosed—Hence, no separate addition was made—Alleged admission in the statement of the managing partner was only a qualified one and the assessee had clearly explained the same to the AO by cogent materials— Order passed by the AO cannot be said to be erroneous or prejudicial to the interests of Revenue—CIT not justified in invoking powers under s. 263- PAUL MATHEWS & SONS vs. CIT, (2003) 263 ITR 101 (Ker)

- Income from undisclosed sources—Addition—Addition on the basis of

statement recorded during survey under s. 133A—Sec. 133A does not empower any IT authority to examine any person on oath, hence, any such statement has no evidentiary value and any admission made during such statement cannot, by itself, be made the basis for addition—This view is clearly supported by CBDT circular dt. 10th March, 2003—No substantial question of law arises - CIT vs. S. Khader Khan Sons, (2008) 300 ITR 157 (MAD)

In fact, the above decision has been approved by Hon'ble Supreme Court as under:-

Income from undisclosed sources—Addition—Addition on the basis of statement recorded during survey under s. 133A—Sec. 133A does not empower any IT authority to examine any person on oath and, therefore, any admission made in a statement recorded during survey cannot, by itself, be made the basis for addition—CIT vs. S. Khader Khan Son 79 DTR 184 (SC)

Therefore, even if, it is assumed though denied that assessee surrendered the income in his statement recorded in the survey, yet it cannot be added based upon such statement alone in view of the above judicial decisions, more so when there was no corroborative evidence. Therefore, prayer of the appellant is that addition made by Ld. AO on the basis of alleged surrender in any case cannot be sustained and may please be so held.

Adverse observations of Ld. AO are met as under:-

1. Ld. AO has mentioned at page 5-6 of the assessment order that director of the appellant company has admitted that the goods were never delivered and sales have also been admitted by the director as bogus.

Reliance is placed on written submission filed in this regard before Ld. CIT(A) at page 9-11. (PB 73-75)

1. Ld. AO has mentioned at page 6 of the assessment order that some enquiries have revealed that Ram Sarup Industries Ltd. has provided accommodation entries of bogus sales to Punj Lloyd Ltd. and MJ Punj Lloyd Ltd. has inflated its expenses.

Reliance is placed on written submission filed in this regard before Ld. CIT(A) at page 11. (PB75)

1. Ld. AO has mentioned at page 9 of the assessment order that appellant has retracted the surrender after two and half years.

Reliance is placed on written submission filed in this regard before Ld. CIT(A) at page 11-12. (PB 75-76)

Ld. AO thereafter has written extensively on Saw regarding admission and its retraction. Reliance is placed on written submission filed in this regard before Ld. CIT(A) at page 12. (PB 76)

1. Ld. AO in his reply dated 29.10.2014 to remand report has alleged that all the bills and documents in respect of each thirty five trucks have been produced, but no evidence has been produced by assessee in respect of barrier crossing fee incurred by them in respect of any of the 35 trucks. This also goes to prove that in fact no sales have been made and, these are just book entries and only bills have been arranged through entry operator. This fact further finds support from the fact that just from 16th to 19th sep, 2009 35 trucks of goods were sent but transporter has no documentary evidence of expenses incurred in respect of barrier fee etc. even in respect of single truck. Since these are just accommodation entries.

In reply, it is submitted that assessee have produced voluminous evidences to show the genuineness of the transaction entered and whereas the barrier crossing fee is concerned, it is a very nominal expense incurred by transporters. Non availability of documents in respect of such petty expense cannot negate the all the evidences placed on record proving the genuineness of claim of assessee.

Adverse observations of Ld. CIT (A) are met as under:-

1. Ld. CIT(A) at para 10.8 of pg 19 of the order has alleged that the statement given during survey cannot be overlooked and the contention that the sale and purchase both are just book entries cannot be negated. Statement given during survey is prime document. It is not lengthy enough to say that Mr. Dilip Didwania got exhausted, tortured and forced to give this incorrect statement

without application of mind. The last line is in the handwriting of Mr. Dilip Didwania itself. Therefore, there is no reason to dispute the content of the statement.

In reply, it is submitted that it is quite strange on the part of Ld. AO to ask for corroborative evidence of coercion whereas Ld. AO has made addition in the hands of the appellant without any corroborative evidence. Copies of statements were not given and when these copies were given, the appellant read them and then filed his retraction.

PB 42-46 is the copy of letter dated 21.02.2013 filed by appellant duly explaining that the such statement is the outcome of prolonged interrogation as director of assessee company would never have made such a statement in his right senses.

Mere signing of the statement at the end of the document will not authenticate the document as Mr. Dilip Didwania never got a chance to read the statement and the statement was not made available to the assessee even thereafter.

PB41 is the copy of letter dated 19.02.2013 filed by assessee requesting for the statement which itself proves assessee was never aware of such reshuffling of his words.

It is a matter of common knowledge that high handedness and arbitrary attitude is resorted in the survey proceedings and in the present case, it is evident by the sheer fact that though there was no evidence against the assessee to this fact yet director of assessee company was made to speak in this fashion Obviously, a person facing interrogation in intimidated environment continuously is bound to breakdown as happened in the present case.

1. Ld. CIT(A) at parall.4 of pg 20 of order has held that sales are bogus this means the benefit of such sales has been passed on to the purchaser by providing mere book entry of purchase in the hands of the recipient. It is a common practice while providing such bogus entries that a small percentage of such bogus entry is taken by such entry provider as commission, over and

above the amount. Since in the present case the entry has been provided by for Rs. 4,05 crores. It is held that 0.25% of such amount has been received by the appellant in the form of commission. Accordingly, Rs. 1,01,400/- is treated as commission income of the appellant company.

In this regard, respectful submission of the appellant that Ld. CIT(A) assumed that the appellant must have received commission at the rate of 0.25% on the amount of sales made by assessee without any corroborative evidence in this regard. Ld. CIT(A) himself has admitted that nothing has been found on the records to show that payment received from M/s. Punj Lloyd Ltd. has been returned by assessee and also the payment made by assessee to M/s Ramsarup Utpadak was also not found to be received back by the assessee.

In the light of the above it is vehemently clear that not even an iota of evidence has been found by CIT(A) proving that the transaction entered is bogus. Therefore, sustainment of addition of Rs. 1,01,400/- is nothing but the outcome of surmises, conjectures and reflection of pre biased mind set of the Ld. CIT(A).”

7. We have heard both the parties and perused the material available on record. The CIT(A) held as under:-

“11.2 In view of the above, and as also recorded by the AO that the sales and purchases both are merely book entries, the same is liable to be reduced from the sales as well as purchases, considering that since there is no sales, there cannot be any purchases. Since, there is no purchase or sale the elimination of same from the profit and loss account will only show surplus between sale and purchase, if any. Accordingly, the addition on the basis of sales alone cannot be tenable. Further, the sales have already been recorded in the books, hence any addition in this regard amounts to double addition.

11.3 Looking to the facts of this case and in law it is held that during

survey proceedings no surrender of additional income was offered by the appellant. Further, since sales and purchases both are bogus as stated in the statement by the director of the appellant and also mentioned by the AO, hence there could be no addition on the basis of bogus entries alone. The bogus purchases offsets the bogus sales and no other corroborative/supporting evidence found to say that any cash has been paid or received towards such transactions, out of books. Nothing has been found during survey to conclude that the appellant is generating additional unaccounted income. In view of the above, the addition made on account of bogus entries is not tenable and liable to be deleted.”

The CIT(A) has given a detailed finding that nothing has been found during survey to conclude that the assessee is generating additional unaccounted income. In-fact, all the details relating to the sales as well as purchases were given during the assessment proceedings and the books were not at all rejected by the Assessing Officer, which was properly maintained by the assessee. Hence, there is no need to interfere with the findings of the CIT(A). Thus, the appeal of the Revenue does not survive.

8. The assessee has filed appeal under Rule 27 of the Income Tax Appellate Tribunal Rules, 1963 relating to the contrary findings given by the CIT(A) to the factual aspect of the evidences produced before the Assessing Officer as well as before the CIT(A). As regards the observation of the CIT(A) that sales are bogus are contrary to the findings of the CIT(A) in the order itself as well as while going through the records also the sales are properly explained by the Assessee before the Revenue authorities. When we looked into the evidences, we found that all the entries as well as bills and vouchers of each transaction along with transportation receipts and details were meticulously given before the Assessing Officer as well as before the CIT(A), amounting to Rs. 4,05,53,574/- . Therefore, the observation made by the CIT(A) is contrary to the records. Thus, we allow application filed by the assessee under Rule 27 of the Income Tax Rules, 1963.

9. In result, the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on this 10th Day of August, 2021.

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated : 10/08/2021

*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI