

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'A' : NEW DELHI)**

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**(THROUGH VIDEO CONFERENCE)**

**ITA No.4661/Del./2016  
(Assessment Year : 2012-13)**

ACIT, Circle 59 (1),  
New Delhi.

vs. Shri Amit Singh,  
46, Vardan Apartments,  
I.P. Extension,  
Delhi – 110 092.

**(PAN : BFOPS4815P)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None

REVENUE BY : Shri Bhoop Singh, Senior DR

Date of Hearing : 02.08.2021

Date of Order : 09.08.2021

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

Appellant, ACIT, Circle 59 (1), New Delhi (hereinafter referred to as 'the Revenue') by filing the present appeal sought to set aside the impugned order dated 07.06.2016 passed by the Commissioner of Income-tax (Appeals)-19, New Delhi qua the assessment year 2012-13 on the grounds inter alia that :-

**“1. The order of the Ld. CIT(A) is bad in law and not in consonance with the facts of the case.**

**2. The Ld. CIT(A) erred in not appreciating the fact that the assessee was making purchases from related party covered u/s 40A(2)(b) of the I.T. Act, 1961 and the assessee failed to satisfy the Assessing Officer as to whether the price paid for the goods purchased from M/s MSA Engineering Pvt. Ltd was at arms length or not. Therefore, genuineness of purchases was not established by the assessee.**

**3. The Ld. CIT(A) erred in accepting the books of accounts by setting aside the observations of the Assessing Officer in this regard.”**

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee is an individual taxpayer drawing salary from M/s. India Intermesh Limited in the capacity of a Director of the company. Assessee is also engaged in the business of wholesale trading of casting, spare parts and other engineering components under the name & style of proprietorship concern M/s. Intelligent Engineering Solutions. Assessee filed return of income at Rs.75,59,590/- which was subjected to scrutiny.

3. Assessing Officer (AO) noticed from the verification of profit & loss account, audit report and books of account of the assessee that proprietorship concern of the assessee, M/s. Intelligent Engineering Solutions achieved sales of Rs.193,17,32,850/- from the purchases to the tune of Rs.1,91,82,25,047/- but there are no corresponding transporting charges & freight charges claimed in the P&L account. Declining

the contentions raised by the assessee, AO proceeded to conclude that the transactions made by the assessee are only book entries and are not genuine business transactions and this business of the assessee is merely a tool to provide transfer of book profit from one party to another party. Consequently, AO rejected the books of account u/s 145 of the Income-tax Act, 1961 (for short 'the Act') and on the basis of comparables, recalculated the net profit at 1.5% of the sales turnover.

4. Assessee carried the matter before the Id. CIT (A) by way of filing appeal who has deleted the estimated profit calculated at 1.5% but disallowed the remaining expenses claimed under the head 'salary' of the assessee by partly allowing the appeal. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeal.

5. Assessee has not preferred to put in appearance despite issuance of the notice and consequently, we proceeded to decide the present appeal with the assistance of the Id. Senior Departmental Representative as well as on the basis of documents available on the file.

6. We have heard the Id. Senior Departmental Representative for the revenue to the appeal, gone through the documents relied

upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

7. We have perused the impugned order passed by the Id. CIT(A), operative part thereof is extracted for ready perusal as under :-

**“8. I have gone through the submissions of the appellant and facts of the case. The following facts emerged from the submission of the assessee-**

- **The assessee is a shareholder in M/s MSA Engineering Pvt. Ltd. and he is also Prop. of M/s Intelligent Engineering Solutions and supplies the goods to Energo Engineering Projects Ltd. The goods were neither transported by him nor he under took loading or unloading. He simply procures order, sources the goods from MSA Engineering Pvt. Ltd. which Are transported by MSA Engineering Pvt. Ltd. to Energo Engineering Projects Ltd.**
- **Since he is only procuring the order for MSA Engineering Pvt. Ltd. which is shipping the goods, he does not maintain any godown. The Assessing Officer has stated that since the MSA Engineering Pvt. Ltd. was related party the Tax Auditor should have pointed it out in tax audit report u/s 40A(2)(b). The observation of the Assessing Officer is correct, However, the Assessing Officer has not resorted to section 40A(2)(b) to say that purchases from MSA Engineering Pvt. Ltd. were not made at arms length.**
- **AO states that the assessee has not claimed any transportation charges for delivery from MSA Engineering Pvt. Ltd. to Energo Engineering Projects Ltd. and L/R and vehicle number are mentioned on the bills which clearly show that this is a sham transaction and merely a book entry. However the Assessing Officer had in the preceding year also made inquiries from debtors, creditors, bank and even Sales-tax authority and nothing adverse was found. It is also a fact that since no transport charges were claimed by the assessee, it was not material for him to keep the record of the bills or L/R.**
- **The argument of the Assessing Officer is that the Authorised Representative has not filed the specific origin of goods i.e. place of the manufacture, he also fails to provide the detailed note on the business of the assessee right from the purchase the goods and finalizing the sale. In my opinion since the**

assessee was only a trader procuring order, the place of manufacture or origin of goods was not important to him, neither to know the process of manufacture or the party by whom the goods were manufacture. Nor does it seem relevant for the purpose of assessment, of a trader.

- The Assessing Officer further pointed out that registered address of the firm was a residential house. Since the assessee is only procuring the orders. The residential house has been given as the correspondence address, since it is not the case of the A.O. that it was used as goddown for commercial premises.
- The last argument of the Assessing Officer that the books of accounts showed opening and closing stock although there was no godown. The assessee has explained that the stock represented the goods in respect of which the orders have been received and which were in the process of supply, he states that the stock represents the earmarked goods in the godown of the supplier which were sent in the next year.
- The conclusion of the Assessing Officer shows that he has considered the entire transactions as sham. However, after rejecting the books, he estimated profit at 1.5%. He has not given any basis of rejection of books of accounts. He only pointed out that the transactions are only book entry and not genuine business transaction.
- In this contest the following points are need to be considered :-
  - i) The assessee has procured the goods from MSA Engineering Pvt. Ltd. which had been verified by the preceding Assessing Officer. The goods have been sold to Energo Engineering Projects Ltd. and the debtors had also been verified by preceding the Assessing Officer. The Assessing Officer had independently made inquiry from the Sales-tax department that the sales-tax return has been filed in respect of sales. Regular payments are being received from debtors and payments are being made to the suppliers. The assessee has maintained regular stock register. The parties have confirmed that they have supplied the goods and purchased the goods.
  - ii) The Assessing Officer has not able to pin point any incriminating facts to justify the rejection of books of accounts. He is blowing hot and cold at the same time, by firstly treating the transaction as sham and at the same time, rejecting the books and estimating a higher profit rate on the turnover disclosed in the books.

9. Considering the facts and circumstances of the case and following the judicial pronouncement relied upon by the assessee, the rejection of the books of accounts is uncalled-for and is without any

basis. Therefore addition on account of re-estimating the profit @ 1.5% is deleted.

10. It is a fact that the assessee is only a mediator in the case and he is also a director of a company MSA Engineering Pvt. Ltd. He could have procured the orders as a director of MSA Engineering Pvt. Ltd. and therefore there was no need to rout the same through Mis Intelligent Engineering Solutions. However the Assessing Officer cannot step into the shoes of the Assessee to manage his affairs. But the matter of fact remains that, M/s Intelligent Engineering Solutions was not engaged in rendering any material services, & there was no need to claim complete establishment expenses which have been claimed by it.

11. A perusal of P&L account shows that while various expenses like conveyance, wages, rent, telephone etc. may have been incurred for the purpose of business. The major expenditure is on account of salary and allowance of Rs.21,45,000/-. During the course of assessment proceedings in the preceding year, the Assessing Officer to verify the genuineness of these expenses on a random basis had asked the Authorised Representative to produce 6 persons out of 12. The Authorised Representative however could not produce even a single person and he stated that 5 of them have already left business. It is a fact that 12 persons are not required for business since no physical activity was rendered by the assessee. He is not involved in transporting, inspection, loading and unloading of goods. The payment of salary is not for the purpose of business. Considering the facts of the case that the assessee is filing sale-tax return and some employee may be needed to run day to day establishment and banking matters, I allow the salary of manager & a few executives amounting to Rs.6,76,670/-. The remaining expenses under the head salaries are disallowed. Thus would result in an addition of Rs.14,68,400/-.

8. Undisputedly, assessee is a shareholder in M/s. MSA Engineering Pvt. Ltd. and also proprietor of M/s. Intelligent Engineering Solutions and supplied the goods to Energo Engineering Projects Ltd.. It is also undisputed fact on the file that goods were neither transported by him nor he undertook loading and unloading, rather his job is to procure orders and sources the goods from MSA Engineering Pvt. Ltd. which was transported by MSA Engineering Pvt. Ltd. to Energo Engineering Projects Ltd.

9. When Id. CIT (A) has arrived at the factual finding that assessee himself has not transported the goods nor carried out loading and unloading, the findings returned by the AO that the transfers made by the assessee are merely book entries are not sustainable. AO is blowing hot and cold in the same breath because at one point of time he has observed that transactions made by the assessee are only book entries and not genuine business transactions but at the same time recalculated the net profit at 1.5% of the sales turnover by rejecting the books of account which is not permissible under law.

10. At the same time, AO also stated that since M/s. MSA Engineering Pvt. Ltd. was a related party the tax auditor should have pointed out it out in tax audit report u/s 40A(2)(b) of the Act but at the same time has resorted to section 40A(2)(b) to observe that the purchases from M/s. MSA Engineering Pvt. Ltd. were not made at arm's length.

11. Moreover, in the preceding years, AO by conducting enquiry from the auditor, creditor, bank and sales-tax authorities accepted the identical transactions undertaken by the assessee and in the preceding years, the assessee has also not claimed any transport charges. Ld. CIT (A) has also dealt with the findings returned by

the AO that when assessee has been procuring only orders, residential address can be given as a correspondence address.

12. So, in view of what has been discussed above, we are of the considered view that when the factual findings have come on record that assessee has not been transporting, inspecting, loading and unloading of goods, the findings given by AO are based upon conjectures and surmises. So, Id. CIT (A) has rightly deleted the recalculated profit @ 1.5% and has allowed the salary of manager and a few executives amounting to Rs.6,76,670/- and disallowed the remaining expenses. So, finding no illegality or infirmity in the impugned order passed by the Id. CIT(A), present appeal filed by the Revenue is hereby dismissed.

**Order pronounced in open court on this 9<sup>th</sup> day of August, 2021.**

**Sd/-  
(O.P. KANT)  
ACCOUNTANT MEMBER**

**sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Dated the 9<sup>th</sup> day of August, 2021  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-19, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**