

आयकर अपीलिय अधीकरण, न्यायपीठ –“A” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
[Before Shri A. T. Varkey, Judicial Member and Dr. M. L. Meena, Accountant Member]

I.T.A. No. 120/Kol/2020
Assessment Year: 2011-12

M/s Om Steel India (PAN: AABFO 6097 Q)	Vs	ITO, Ward-48(2), Kolkata
Appellant		Respondent

Date of Hearing (Virtual)	04.08.2021
Date of Pronouncement	15.09.2021
For the Appellant	Shri Arya Das, A.R
For the Respondent	Shri Praveen Kishore, CIT

ORDER

Per Bench:

This is an appeal preferred by the assessee against the order of the Ld. CIT(A)-14, Kolkata dated 18.10.2019 for Ay 2011-12.

2. At the outset, the Ld. AR does not want to press ground no. 3, therefore, it stands dismissed.
3. Ground No. 1 and 4 are general in nature so dismissed.
4. Only ground no. 2 survives for adjudication. Brief facts of the case are that the AO noticed that he received an information from ACIT, Hqrs. that during the course of search and seizure conducted by the DDIT (Inv.) on 31.03.2016 in respect of Mr. Sanjeev Kr. Singh (Third Party) wherein he has admitted that he was mainly engaged in the business of providing accommodation entry through bogus billing, share capital etc. According to the AO, on perusal of the beneficiary list sent by the DDIT (Inv.) it revealed that assessee is one of the beneficiary of Shri Sanjeev Kr. Singh (Third Party). According to AO, assessee has made transaction to the tune of Rs.1,12,33,443/- from the following five concerns controlled by Mr. Sanjeev Kumar Singh (Third Party):
 - i) M/s. Jayshree Sales Corporation;

- ii) M/s. Gajraj Sales Pvt. Ltd.;
- iii) M/s. Kasturi Metal Trading Pvt. Ltd.;
- iv) M/s. Rajputana Vanijya Pvt. Ltd.
- v) M/s. Sigh Mercantile Pvt. Ltd.

5. Therefore, he issued notice u/s. 148 of the Act for reopening the assessment and thereafter the AO records in the assessment order that during the reassessment proceeding the assessee had submitted P&L Account, Balance Sheet for the relevant period, bank statement and produced bill, voucher etc. which the AO accepts to have been perused (refer para 4 of AO's order). According to AO, he confronted the assessee as to why the alleged transaction with the aforesaid five companies to the tune of Rs.1,12,33,443/- should not be added to the total income. According to AO, the Ld. AR of the assessee failed to furnish any plausible explanation to substantiate the transaction with the aforesaid five (5) companies as genuine, therefore, he added the amount of Rs.1,12,33,443/- as bogus purchase. Thereafter, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to delete the addition made by the AO on the reason that since the AO has not rejected the books of account of the assessee, the inference that can be drawn is that the AO has accepted the sales reflected in it and, therefore according to Ld. CIT(A), the entire alleged bogus purchase cannot be added as income of the assessee, so he deleted the addition of Rs.1,12,33,443/-. However, the Ld. CIT(A) was of the opinion that the profit embedded from such purchases should be considered for addition and, therefore, since the assessee has disclosed a GP of 5.1% he was of the opinion that the assessee's undisclosed profit would be recomputed by making an addition of 5.1% on the undisclosed purchase of Rs.1,12,33,443/- which he computed at Rs.5,72,906/- and gave partial relief to the assessee. Against this impugned action of the Ld. CIT(A), the assessee is before us.

6. We have heard rival submissions and gone through the facts and circumstances of the case. We find that in the present case the AO has made the addition of the entire purchase of Rs. 1,12,33,443/- since AO held that the entire purchase from the aforesaid five (5) companies as bogus which was based on an information gathered by the Investigation Wing of the Department and admittedly on the strength of statement of Mr. Sanjeev Kr. Singh recorded during search in his premises on 31.03.2016 that he is indulging in providing

accommodation entries to the beneficiaries. And according to AO, the Investigation Wing has found out that assessee had transaction in this AY 2011-12 with five (5) of Shri Sanjeev's companies and since there was no plausible explanation given by the assessee, the AO held the purchases made by the assessee with the five (5) companies to the tune of Rs.1,12,33,443/- as bogus purchases and on appeal, the Ld. CIT(A) has deleted the same on a finding that AO by not rejecting the books of the assessee has accepted the sales, so he deleted the addition. We agree with this action of Ld. CIT(A), since it is elementary that without purchases of goods, sales of goods cannot happen. Consequently if the AO disallowed the purchases (like in this case) then he has to either reduce the sales or stock by a matching sum. So, in either case, there will be no impact on the profit. So we agree with the action of Ld. CIT(A) to delete the entire additions of Rs. 1,12,33,443/-. However, thereafter the Ld. CIT(A) has restricted the addition by GP @ 5.1% of undisclosed purchases and sustained Rs.5,72,906/- which is assailed before us. This impugned action of the Ld. CIT(A), we do not countenance for the simple reason that the principle on which he applied the gross profit rate or profit embedded in the bogus purchase/sale is only when it is proved legally that assessee had indulged in bogus purchases/ sales. Here in this case, the bogus purchase of goods from five (5) companies of Shri Sanjeev's Kr. Singh has not proved legally. In this case, we note that the AO has drawn adverse view against the assessee only on the basis of the purported statement of Shri Sanjeev Kr. Singh recorded during search on 30.03.2016 that he indulges in giving accommodation entries through his concerns to the beneficiary. No other evidence other than this purported statement is there to hold that assessee is a beneficiary of such a modus operandi. And this statement cannot be the sole basis to hold that the assessee is a beneficiary because admittedly the statements of Mr. Sanjeev Kr. Singh (Third Party) has been recorded behind the back of the assessee on 30.03.2016 and the AO has made the addition without furnishing a copy of it to the assessee; and has not given any opportunity to cross examine him. Therefore, according to us, the statement of Shri Sanjeev Kr. Singh could not have been the basis of an addition when the fact is that the assessee has produced all the relevant documents like purchase bills, vouchers etc. which are available in the paper book. Therefore we hold that when the basis of the addition itself goes, the Ld. CIT(A) erred in estimating the income of the assessee and that too without rejecting the books of accounts of the assessee. Therefore, the

addition of Rs. 5,72,906/- is also directed to be deleted. For this decision of ours, we rely on the order of the Hon'ble Supreme Court in the case of CIT, New Delhi Vs. M/s. Odeon Builders Pvt. Ltd. reported in 418 ITR 315 wherein a similar case the Hon'ble Apex Court has held as under:

"3. However, on going through the judgments of the CIT, ITAT and the High Court, we find that on merits a disallowance of Rs. 19,39,60,866/- was based solely on third party information, which was not subjected to any further scrutiny. Thus, the CIT (Appeals) allowed the appeal of the assessee stating:

"Thus, the entire disallowance in this case is based on third party information gathered by the Investigation Wing of the Department, which have not been independently subjected to further verification by the AO who has not provided the copy of such statements to the appellant, thus denying opportunity of cross examination to the appellant, who has prima facie discharged the initial burden of substantiating the purchases through various documentation including purchase bills, transportation bills, confirmed copy of accounts and the fact of payment through cheques, & VAT Registration of the sellers & their Income Tax Return. In view of the above discussion in totality, the purchases made by the appellant from M/s Padmesh Realtors Pvt. Ltd. is found to be acceptable and the consequent disallowance resulting in addition to income made for Rs. 19,39,60,866/-, is directed to be deleted."

4. The ITAT by its judgment dated 16th May, 2014 relied on the self-same reasoning and dismissed the appeal of the revenue. Likewise, the High Court by the impugned judgment dated 5th July, 2017, affirmed the judgments of the CIT and ITAT as concurrent factual findings, which have not been shown to be perverse and, therefore, dismissed the appeal stating that no substantial question of law arises from the impugned order of the ITAT."

In the light of the aforesaid discussion and in view of the decision of the Hon'ble Supreme Court in the case of M/s. Odeon Builders Ltd. (supra) we find that the factual basis on which the addition has been made by the AO and the Ld. CIT(A) falls and, therefore, no addition could have been sustained and, therefore, we order the deletion of the addition of Rs.5,72,906/-.

7. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 15th September, 2021.

Sd/-
(Dr. M. L. Meena)
Accountant Member

Sd/-
(A. T. Varkey)
Judicial Member

Dated: 15th Septemeber, 2021

Jd, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s Om Steel India, 233, Belilious Road, Howrah-711101
2. Respondent – ITO, Ward-48(2), Kolkata, Now 47(5), Kolkata
3. Ld. CIT(A)-14, Kolkata (sent through e-mail)
4. The CIT - Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Senior Private Secretary/DDO
ITAT, Kolkata Benches, Kolkata
