

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 177/DEL/2020

[Assessment Year: 2015-16

M/s Esteem Steels Pvt. Ltd., Shop No. 108, Vardhman Mayur Market, Mayur Vihar-III, Delhi-110096.	<u>Vs</u>	ACIT, CC-16, New Delhi
PAN- AAACE8821C		
APPELLANT		RESPONDENT
Appellant by	Shri Naveen Kumar, Adv.	
Respondent by	Sh. Sanjiv Mahajan, Sr. DR	
Date of hearing	28.02.2022	
Date of pronouncement	09.03.2022	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of learned CIT(Appeals)-26, New Delhi dated 18.11.2019, pertaining to the assessment year 2015-16.

2. The assessee has raised following ground of appeal:

“That the Ld. CIT(A) has erred in law in confirming the addition of Rs. 6,23,918/- on account of cessation of liability made by the AO by invoking the provisions of section 41(1) of the Income Tax Act, 1961.

3. In this case the assessee filed its return of income through electronic mode at Nil on 28.09.2015. The case was selected for scrutiny through CASS. A notice u/s 143(2) of the income-tax Act, 1961, hereinafter referred to as the "Act" dated 05.04.2016 was issued and served upon the assessee. In response to the notice the learned authorized representative of the assessee attended the proceedings and filed the requisite details. Thereafter, the Assessing Officer proceeded to frame assessment u/s 143(3) of the Act. While framing the assessment, the Assessing Officer noticed that an amount of Rs. 24,95,672/- was outstanding in the name of sundry creditor M/s Nath Steel Industries for a substantially long period without any fund movement. It was stated by the assessee that the amount was squared up in the financial year 2014-15. However, the explanation of the assessee was not accepted by the Assessing Officer and he treated this amount as cessation of liability u/s 41(1) of the Act and made addition of Rs. 24,95,672/-.

3. Aggrieved, the assessee carried the matter to the learned CIT(Appeals), who, after considering the submissions of the assessee, treated this amount as bogus purchases. Therefore, he restricted the disallowance to the extent of 25%. Now the assessee is in appeal before this Tribunal.

4. The only effective ground is against sustaining the addition of Rs. 6,23,918/- treating the amount as profit on bogus purchases.

5. Learned counsel for the assessee vehemently argued that the authorities below were not justified in making the addition by treating the entire amount as cessation of liability. He contended that the Assessing Officer made addition u/s 41(1) of the Act. However, the learned CIT(A), without giving any separate notice to the assessee, treated 25% of the impugned addition as the bogus purchases. He submitted that learned CIT(Appeals) as well as the Assessing Officer have given a finding contrary to the records. He contended that it was demonstrated before the Assessing Officer that the amount was squared up through banking channel. Moreover, the learned CIT(Appeals) was not justified in taking a different stand. It was not the case of the Assessing Authority that the liability was bogus. It was the case of the Assessing Officer that the amount was lying outstanding for a substantially long period of time.

6. On the contrary learned DR opposed the submissions and supported the orders of the authorities below.

7. I have heard rival submissions and perused the material on record. I find that there are contradictory stand taken by the authorities below. It was stated before the authorities below that the amount has been squared up. None of the authorities has adverted to the submissions of the assessee that the amount was paid to some other person at the instruction of the creditor. Therefore, considering the totality of the facts and submissions of the assessee that the amount was squared up at the

instance of the creditor and more particularly the Revenue has not rebutted the contention of the assessee by placing any contrary material on record suggesting that the liability was bogus the Assessing Officer is hereby directed to delete the addition. Ground taken by the assessee is allowed.

8. In the result, assessee's appeal is allowed.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Dated:09/03/2022.

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI