

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI S. S. GODARA, JM
AND SHRI DR. DIPAK P. RIPOTE, AM

आयकर अपील सं. / ITA No.1285/PUN/2017
निर्धारण वर्ष / Assessment Year : 2012-13

Masscorp Ltd,
38/5 d3 Block MIDC,
Chinchwad Pune- 411 019.

PAN : AAECM5180G

.....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Circle-10, Pune

.....प्रत्यर्थी / Respondent

Assessee by : None
Revenue by : Shri S. P. Walimbe

सुनवाई की तारीख / Date of Hearing : 19.04.2022

घोषणा की तारीख / Date of Pronouncement : 22.04.2022

आदेश / ORDER

PER S. S. GODARA, JM :

1. This assessee's appeal for A.Y. 2009-10 is directed against the CIT(A)-9, Pune's order dated 13/02/2017 in case No.PN/CIT(A)-6/DCIT, Cir-10/783/2014-15/406, involving proceedings u/s 143(3) of the Income Tax Act, 1961 ; in short "the Act.

Case called twice. None appears assessee's behest. The present appeal file indicates that the registry has not only issued various notices to the assessee but also three of the said notices stand received back unserved. We accordingly proceeded ex-parte against the assessee.

2. The assessee pleads the following substantial ground in the instant appeal Ground 1 to 5.

“1. The learned CIT(A) has erred in understanding the basic and fundamental principle of law that, statement recorded in the course of survey u/s. 133A is not binding without substantial corroborative evidence & has also erred in considering the Judgment of Khader Khan of Madras High Court confirmed by the Supreme Court.

2. The learned CIT(A) has erred by not appreciating the fact that, accept the entries in the diaries & the statement given in the course of survey there was no corroborative evidence to substantiate & sustain the alleged additions made by the AO.

3. The learned CIT(A) has erred in sustaining & confirming the additions of Rs.33,48,686/- only on the grounds of the same being offered by the Appellant in the course of survey statement.

4. The learned CIT(A) has erred in sustaining & confirming the additions of Rs.1,50,00,000/- only on the grounds of the same being offered by the Appellant in the course of survey statement.

5. The learned CIT(A) has erred in not appreciating the fact that, all the figures noted in the impounded diaries represent sales turnover & also erred in not accepting the fundamental law of adding only the Gross Profit or Nit Profit on such sales turnover when found unrecorded.”

Ld.DR invited our attention to the CIT(A)'s detailed discussion affirming the impugned addition(s) read as under.

“6. In ground No.1 the appellant contends that the learned A.O. has erred in assessing income at Rs.30,09,46,400/- as against revised returned income of Rs. 30,85,97,718/- without giving proper and sufficient opportunity and without providing the copies of the documents impounded during the course of survey action u/s 133A, thus the assessment order is bad in law as same has been passed in gross violation of principles of natural justice.

Considering the facts of the case discussed in para 5 above and facts discussed in respect of the grounds no. 2 & 3 in para 7 & 8 respectively, of this order, it is amply clear that the appellant was granted sufficient opportunity of being heard during the course of survey proceedings as well as assessment proceedings. The disclosure of the additional income made in the statement recorded during the survey was based on the facts revealed from the documents found and impounded during survey. Thus, the additional income offered during the survey was based on & supported by the documents impounded and was offered by a responsible person of the company who was Director, well versed with the affairs of the company, in his statement recorded in the

presence of the CMD of the company. It is clearly mentioned (in the statement) by Shri Allen Bansode, CMD that Shri Girish Chandrashekar was a responsible Director of the company, well versed with the affairs of the company and technical aspects concerning the company. He himself in the capacity of Chairman and Managing Director of the company, Masscorp Ltd. and also in his individual capacity fully agreed with the facts and information recorded in the statement and endorsed the same. Thus it is clear that during the course of survey proceedings all the incriminating documents were confronted to Shri Girish Chandrashekar during the course of recording of his statement which is clear from para 5 of this order. Further, during the course of assessment proceedings the AO has discussed with the appellant the issues of disclosure of additional income in survey as is clear from the order sheet notings dated 20.02.2015 and 23.02.2015 on which Shri Girish Chandrashekar and Shri Allen Bansode, respectively attended before the AO. The AO has discussed the issues with them and as discussed in the assessment order they had mentioned that the issues had already been explained during the survey. As far as the contention of the appellant is concerned that the appellant was not provided copies of the documents impounded during the course of survey action, it is mentioned that here also the Ld.AR has as the appellant was in possession of the copies of the said documents and the copy the statement also as is clear from the circumstances that during the course of assessment proceedings which were conducted from August, 2013 to February, 2015 and it is seen that no such request was made during the assessment proceedings. Moreover, during the course of appellate proceedings the Ld.AR himself has provided copy of the statement recorded during the survey and also the relevant extract of the impounded documents particularly bundle No.7 and bundle No.11 with his reply dated 07.02.2017. Some of portions of his reply is reproduced in this order and other details are placed on the record. Thus, the AO has followed the principles of natural justice by allowing sufficient opportunity of being heard to the appellant during the course of assessment proceedings. Thus, appeal on this ground is dismissed.

7. Ground No.2 relates to addition of Rs.33,48,686/- on account of unaccounted income.

7.1 The AO as discussed in para 3.2 of the assessment order has made addition of Rs.33,48,686/-. The relevant para is reproduced below :

“3.2 UNACCOUNTED INCOME :

3.2.1 In the statement recorded, the assessee as page no. 6, was requested to go through the bundle no.11 i.e. black diary and to identify the entries which are recorded in the diary but not accounted in the books. In reply, the assessee identified certain entries over the various years. The entry pertains to the year under consideration is of Rs.33,48,686/- from Sharda is offered to income by the assessee. The said entry was shown to the assessee during the scrutiny and requested

to furnish the details. But the assessee did not furnished any explanation rather he said during the hearing that he had already furnish the detail explanation during the survey. Therefore, the said entry is treated as unaccounted income unearthed during the survey and is added back to the total income of the assessee. If the survey was not conducted then the income would have escaped to be unaccounted in the books of the assessee. Thus, the penalty is initiated u/s 271(1)(c) for the concealment of an income.”

7.2. The appellant vide submissions dated 07.02.2017 has contended as under:

“2.2. The Appellant Co. submits & request your Honor to look at page 6 of bundle no.11, your Honor will be astonished to see that the said page does not any figure of Rs.33,48,868/- it is surprising as to from where the learned AO has got the alleged figure of the amount, it is simply submitted it is a mistake & no proper verification of the figures appearing on the particular pages have been done. As such when the alleged figure is not appearing on that particular page as found & brought on record by the learned AO, the addition of an amount is baseless & without any cogent evidence & hence the same is required to be deleted.

2.3. However the Appellant Co. is clarifying that the said figure or amount of Rs.33,48,868/- is appearing on page no. 109 of bundle no.11 i.e. the same black diary as “Sharda seth :- Rs.33,46,680/- (Hawala)”. The Appellant submits that, in the course of recording of the statement at the time of survey one of the directors of the Co. had state vide Q no. 21 as amount as income.

2.5 The appellant further submits that the said amount of Rs.33,46,680/- pertains to the cash sales which might have not been considered in regular sales for the year. The AO has added the entire amount of sales as Appellant’s income, the appellant submits that, as seen from the page the said amount is noted to be have received from Shard Seth, to whom the Appellant has been selling steel etc.

8. The Appellant submits, that the amount of Rs. 33,48,680/- on page no.109 & the total amount of Rs.5,37,36,500/- on pages 13 & 14 are unrecorded sales & as a well settled has not disclosed sales, the sales represent the goods acquired the income of the Appellant who has not disclosed sales, the sales represent the goods acquired where cost has already been incurred & it is the realization of excess over the cost of incurred that only forms part of the profit, hence the Appellant submits that a net profit on the total sales of Rs. 5,70,85,180/- should be added as income of the Appellant with reference to the alleged pages on the lines of the Net profit shown by the Appellant on his regular income as per the Audited Balance Sheet for the year.”

7.3 I have perused the facts of the case and considered carefully the submissions of the appellant on the issue. First of all the Ld.AR has

contended that no proper verification was done by the AO before making the said addition. The Ld.AR has quoted first sentence of para 3.2.1 of the assessment order which is reproduced in para 7.1 of this order. However, from perusal of first sentence of para 3.2.1 of the assessment order it is noted that in the said sentence the AO has referred page 6 of the statement wherein the authorized offer had asked Shri Chandrashekar to go through the bundle No.11 which was blue diary and identify the entries/transactions in said impounded bundle No.11, which were not recorded in the regular books of accounts. Shri Chandrashekar identified the transaction of ₹ 1,52,30,000/- pertaining to A.Y. 2011-12 and ₹ and 33,48,686/- pertaining to A.Y. 2012-13 in the hands of the company M/s under:

Q.21 Please go through the notings of bundle no 01 on page no. 109 dated 26/03/2011 in which the following entry is there

“Sharda Seth, Rs. 33,48,680/- (Hawala)

Please explain this entry

Ans :- Not able to explain now

Q.23 Please once again go through black diary at bundle number 11 of impounded books of accounts and state if there are any other entries left which have not been reflected in your books of accounts?

Ans: I have gone through the said bundle again and I am not able to explain the following transactions as has been stated in the above questions. In summary, an amount of Rs. 1,52,30,000 is not reflecting in the books of accounts for A.Y. 2011-12 and Rs. 33,48686 in A.Y. 2012-13.

The details are as under :-

BundleNo.11

A.Y. 2012-13

Sr.No.	Name	Amount
1	Sharda	3348686

The above amounts are offered for taxation as additional income in their respective Assessment years.

2.4 The Appellant submits to consider the statement & the Answers given with reference to the said, primarily the Appellant has stated that he is not able to explain & again repeated the same & has just stated that the said amount is offered for taxation as additional income, from this it appears that the appellant has just given the answer without any understanding & hence did not offer the said income in the return of income filed for the year & accordingly it was retraction of the said MASSCORP Limited. The relevant questions and answers are reproduced in para 5 above. Thus, the Ld. AR's contention is not correct, instead he himself is not clear about the facts. Further, the transaction of ₹ of 33,48,686/- is recorded at page No. 109 of bundle No.11 which had been admitted by the appellant as undisclosed income. The main, contention raised by the appellant in this regard is that the addition has been made only on the basis of reply given during the course of survey.

The Ld. AR is misleading and twisting the facts claiming that the addition is made only on the basis of admission in the statement recorded during the survey. In this regard the facts on the issue are that the transactions recorded in at page no.109 of bundle No.11 were confronted to Shri Girish Chandrashekar, Director of the Company during the course of survey. These transactions were admitted to be unaccounted which is undisputed fact as the Ld. AR has also accepted the same. In the statement, on the basis of transactions recorded on page no. 109 the undisclosed income was admitted and additional income of ₹ 1,85,78,686/- (i.e. ₹1,52,30,000/- in A.Y. 2011-12 and ₹ 33,48,686/- in the year under consideration) was offered for taxation on the basis of transactions found recorded in the above referred document. This admission was again confirmed in reply to question No.39 of the statement. All these facts are detailed in para 5 above. Thus, considering the facts of the case, the arguments taken by the Ld. AR are rejected and addition is confirmed. Thus, appeal on this ground is dismissed.”

3. We have given our due consideration to assessee's pleading and Revenue's contention & qua the twin issues raised herein. The same are found to be based on assessee's authorized person's survey treatment explaining the corresponding entry(ies) in speculated trading aluminum with date, quantity and rate wise particulars in light of the corroborative material found at its business premises. We thus see no reason to interfere with the lower authorities action making both these additions. The same stand upheld. Suffice to say, it is made clear that the Assessing authority shall ensure that there is no double addition in consequential computation.

4. This assessee's appeal is dismissed.

Order pronounced in the Open Court on this 22nd day of April, 2022.

Sd/-

Sd/-

(DR.DIPAK P.RIPOTE)

(S. S. GODARA)

लेखा सदस्य/ **ACCOUNTANT MEMBER**

न्यायिक सदस्य/**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 22nd April, 2022.

Ashwini

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-9, Pune.
4. The Pr.CIT-5,Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	19.04.2022		Sr. PS/PS
2	Draft placed before author	21.04.2022		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			