

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **982/CHNY/2019**
निर्धारण वर्ष /Assessment Year: 2014-15

The Income Tax Officer,
Ward 3(1),
Tiruchy.

(अपीलार्थी/Appellant)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

सुनवाई की तारीख/Date of Hearing

घोषणा की तारीख/Date of Pronouncement

M/s. Ora Steels,
v. S.F. No. 138-1,
Chennai Bypass Road,
Ariyamangalam,
Tiruchy – 620 010.

PAN: AABFO-8874-D

(प्रत्यर्थी/Respondent)

: Shri. AR V Sreenivasan, Addl. CIT

: Shri S. Sridhar, Advocate &
Shri. N. Arjunraj, CA

: 23.05.2022

: 23.05.2022

आदेश / O R D E R

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal by the Department is arising out of the order of Commissioner of Income Tax (Appeals)-1, Trichy, in appeal no. 230/2016-17/CIT(A)-1/TRY dated 01.01.2019 against the order of the ITO Ward 3(1), Tiruchirapalli, passed u/s. 143(3) of the Income-tax Act, 1961 (herein after referred to as "the Act") dated 31.12.2016.

2. The grounds taken by the Department in this appeal are as under:

- "1. The order of CIT(A) is not acceptable. The order of CIT(A) is contrary to law and facts of the case*
- 2. The Ld.CIT(A) had erred in directing the AO to delete the addition of Rs.6,00,000/- made, as the assessee had failed to furnish any explanation/evidence in support of the claim under 'other expenses'*
- 3. The Ld. CIT(A) had erred in directing the AO to delete the addition of Rs7,52,74,962/- made on difference in closing balance of trade creditor and to sustain only Rs.14,05,943/*
- 4. The Ld. CIT(A) had erred both on facts and law by considering the reconciliation statement produced by the assessee which was not supported by any evidence and which was made as overthought.*
- 5. The Ld. CIT(A) had erred by merely relying on the alleged notional book entries claimed to have been made by the assessee without any material evidence in the form of books of accounts and supporting documents.*
- 6. The appellant craves leave to add, allow or modify any grounds of appeal."*

3. The brief facts of the case are that the assessee is a firm which filed its return on 28.02.2014 reporting a total income of Rs. 3,33,883/-, after adjusting the sum of Rs. 6,00,000/- under the column "any other amount allowable as deduction". During the course of assessment, the Ld. AO proposed to make the addition of Rs. 8,82,79,600/- and requested the assessee to clarify and produce details of High Sea sales. In this respect, the assessee submitted that it is engaged in the business of scrap which is mainly imported from USA and is sold to local parties. One of the supplier of scrap M/s. Anbagam Metal LLC, USA supplied scrap iron and steel to the assessee firm. The Ld. AO noted that there is a difference between closing balance of this trade creditor. From the confirmation letters and

reconciliation statement filed during the course of assessment, Ld. AO took note of difference of Rs. 9,81,88,320/- in the closing balance of the trade creditor M/s. Anbagam Metal LLC, USA and held it to be as unrecorded purchase. The reconciliation statement furnished by the assessee forming part of the assessment order is reproduced as under:

<i>Net Amount after debiting inwards transit as on 31.03.2014</i>	
<i>(1853216 * 60)</i>	= Rs. 11,11,92,960
<i>Less: Stock in transit 2,16744 *60</i>	= Rs. <u>1,30,04,640</u>
	Rs.9,81,88,320
<i>LESS:-</i>	
<i>1. Amount transferred</i>	
<i>to partners capital account 01.04.2012</i>	Rs.6,00,00,000
<i>2. Amount transferred to market development</i>	
<i>Expenses F. Y 2013-14</i>	Rs. 1,44,83,444
<i>3. Non CENVAT credit(BS), debited in F.Y 2013-14</i>	
	Rs. 31,71,950
<i>4. Amount transferred to unsecured loans in</i>	
<i>F.Y 2008-09</i>	Rs. 70,00,000
<i>5. Exchange fluctuation loss debited F.Y. 2013-14</i>	
	<u>Rs.1,20,80,950</u>
<i>Total</i>	<u>Rs.9,67,36,344</u>
	Rs. 14,51,976
<i>Add:</i>	
<i>1. Exchange Fluctuation gain credited</i>	
<i>F.Y.2012-13</i>	Rs. 1,44,66,019
<i>2. Exchange Fluctuation gain credited F.Y.2013-14</i>	
	Rs.1,00,45,363
<i>Total</i>	<u>Rs.2,45,11,382</u>
<i>Balance</i>	<u>Rs.2,59,63,358</u>

4. The Ld. AO not being convinced by the above reconciliation statement and the explanations given by the assessee, proceeded to make the addition in this respect. Further, the sum of Rs. 6,00,000/- was added by the Ld. AO by holding that assessee has not produced any evidence for claiming this as a deduction from the total income. Aggrieved, assessee went into appeal before the Ld. CIT(A).

5. The observations given by the Ld. CIT(A) while granting the relief to the assessee are reproduced as under, for ease of reference:

"20. I have perused the assessment order, grounds of appeal, written submissions and the remand report of the Assessing Officer. I am of the opinion that the transactions or entries in the reconciliation statements cannot impinge the income of the appellant. I am unable to persuade myself to the theory of unaccounted purchases propounded by the Assessing Officer. If it were so, there would not have any entry in the appellant's books in the first place and the journal entries passed to reduce the liability. Secondly the unaccounted purchases with the source of supply cannot be brought to tax, it is only the unexplained purchases that can be brought to tax. Assessee has undoubtedly muddled his accounting but that does not hide the fact that attempt at window dressing by reducing creditors and expenses payable, and increasing partner's capital account may suggest hoodwinking banks and lenders, it will by itself not impact computation of income in the hands of the company, It had to pay Rs. 100 to creditors and now has to pay Rs.40 to creditors and Rs. 60 to its own partner. The only person who seemed to have gained is the Managing Partner, who has now got additional claim of Rs.6 crores over the firm without having actually brought in any capital. Whether such a credit to Managing Partner will be taxable as a gift u/s 56, or unexplained credit u/s 68 or income from business u/s 28(iv)& 28(v) of Income Tax Act, 1961, will have to be done in the assessment of recipient of credit entry, which however, is entirely a different assessment.

21. A remand report was called for on this issue and Addl CIT, Range-3, Trichy Mr. Lakshminarayanan has in his report dated 03/9/2018, submitted that neither the firm M/s ORA Steels nor the partner Mr Balsubramanian had filed returns for Asst. year 2015-16 and hence, accounting treatment of credits in the partner's account could not be commented upon. The A/R has been persistent in pointing that the entries so made were in earlier years and that income impact was expected to NIL.

22. On an analysis of the facts and circumstances, I am of the considered opinion that the difference between the account of the supplier and the appellant has properly explained except to the tune of Rs. 14,05,943/-. Hence, I direct this sum of Rs. 14,05,943/- to be sustained and the balance additions are deleted."

6. Aggrieved by the above, the Department is in appeal before the Tribunal. Mr. S. Sridhar, Advocate and Mr. N. Arjunraj, CA

represented the assessee and Mr. AR V Sreenivasan, Addl. CIT represented the Department.

7. The Ld. Senior DR placed on record a paper book containing 7 pages and pointed out the glaring discrepancies emanating from the accounting records of the assessee. From the paper book, he referred at page 4, the ledger account of Balasubramanian. R. Capital a/c for the period from 01.04.2012 to 31.03.2013 which shows the closing balance of Rs. 92,40,000/-. The same ledger account for the period from 01.04.2013 to 31.03.2014 is placed at page 5 of the paper book. In this ledger account, the opening balance as on 01.04.2013 is shown as a credit of Rs. 2,23,91,870/-. The Ld. Senior DR thus pointed out that the closing balance as on 31.03.2013 appearing at page 4 and the opening balance as on 01.04.2013 appearing at page 5 of the same party in the books of accounts of the assessee are two different figures which demonstrates the glaring discrepancies which exists in the books of accounts of the assessee. There are no reasons and justifications which explains the change in balances of the same party in the books of accounts of the assessee. Similarly, is the case in the case of another ledger account in the name of Market Development Expenses. The Ld. Senior DR further referred to the remand report dated 31.08.2018 placed in the paper book at page 1 to 3 and submitted that the Ld. AO has analytically analyzed and clarified all the accounting

discrepancies in detail, which exist in respect of various ledger accounts forming part of the books of accounts of the assessee. In this respect, the Ld. Senior DR strongly submitted that the factual analysis contained in the remand report has been altogether ignored by the Ld. CIT(A) while granting relief to the assessee except for just making a passing remark in respect of the said remand report. He further submitted that in respect of addition of Rs. 6,00,000/-, Ld. CIT(A) has not given any factual observations or findings and has merely stated that this addition in respect of balance of Rs. 6,00,000/- is deleted. It was submitted that the observations and findings of the Ld. CIT(A) are general in nature based on surmises and conjectures, devoid of any meritorious analysis of the details placed on record.

8. Per contra, the Id. AR referred to page 7 and 8 of the order of the Ld. CIT(A) and pointed out that all the details and explanations were in place to explain the case of the assessee.

9. We heard the rival contentions, perused the material on record and have given thoughtful consideration to the submissions made before us. We find that the moot point in the appeal before us relates to the validation and verification of the claim of purchase made by the assessee from one of the party M/s. Anbagam Metals LLC, USA, in respect of which the net amount shown as on 31.03.2014 of US dollars 18,53,216/- equivalent to Rs. 11,11,92,960/-. On a specific query by

the bench to the Ld. Senior DR in respect of these purchases, he fairly submitted that these are verifiable from the records, though not placed before the bench. It was stated that once the purchase made by the assessee from the said party are verified and validated and found to be genuine, then thereafter subsequent adjustments made from the balance payable against these purchases which are forming part of the reconciliation statement are subservient to the addition made by the Ld. AO. In view of this, we find it appropriate to remit the matter back to the file of the Ld. AO for verification and examination of the purchases made by the assessee from the said party to establish their genuineness. Once this is achieved, the other adjustments made as noted in the reconciliation statement may be dealt on their merits and in accordance with the law.

10. We also note the discrepancies in the accounting records pointed by the Ld. Sr DR from the paper book submitted in the course of hearing. We direct the assessee to clarify and explain the reasons for such discrepancies before the Ld. AO by making corroborative submissions.

11. Since, the matter is restored to the file of Ld. AO for fresh adjudication in terms of our observations herein above, we are not expressing any views on the merits of the case so as to limit the

assessment procedure before the Ld. AO. The observations made herein by us in remanding the matter back to the file of Ld. AO will not impair or injure the case of the assessee nor will it cause any prejudice to the defense/explanation of the Revenue.

12. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced on 23rd May, 2022 at Chennai.

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

Sd/-

(गिरीश अग्रवाल)

(GIRISH AGRAWAL)

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 23rd May, 2022

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |