

IN THE INCOME TAX APPELLATE TRIBUNAL "A"
BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member

I.T.A. No.1489/Kol/2019
Assessment Year: 2013-14

Vishal Victory Metal Engg. Pvt. Ltd.....Appellant
2, G Neelamber Building,
28, B Shakespeare Sarani,
Kolkata – 700017.
[PAN: AABCV0849E]

vs.

ITO, Ward-7(2), Kolkata.....Respondent

Appearances by:

None appeared on behalf of the appellant.

Shri Biswanath Das, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : June 28, 2022

Date of pronouncing the order : June 28, 2022

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 09.05.2019 of the Commissioner of Income Tax(Appeals)-3, Kolkata [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). The assessee in this appeal has taken the following grounds of appeal:

"1. That the learned Commissioner of Income Tax Appeals 3 Kolkata confirming the disallowances of loss Rs.23,33,238/- is quite illegal

2. That the learned CIT(A) 3 Kolkata not considered the facts properly

3. That the learned CIT(A) 3 Kolkata not considered all the transaction between the Pvt Ltd and Ltd. Co.

4. That the appellant further craves to add to and leave alter or to amend any of the aforesaid grounds appeals as and when necessary."

2. No one has put in appearance on behalf of the assessee despite service of notice. A perusal of case file records show that several notices have been served in the past to the assessee through Registered post and even through email to the AR of the assessee, but no one has ever put in appearance on behalf of the assessee. It seems that the assessee is

no more interested in prosecution of the appeal, therefore, we proceed to decide the appeal on merits after hearing the ld. DR and after going through the records.

3. The sole issue involved in this appeal is relating to action of the lower authorities in making disallowance of Rs.23,33,238/- being business loss claimed by the assessee on purchase and sale of skimmed milk powder and channa. During the assessment proceedings, the assessee was asked by the Assessing Officer to furnish necessary evidences to prove the transaction of sale and purchase and the loss thereof incurred by the assessee on such transaction. However, the assessee failed to furnish any reliable evidence to prove the transaction. Even the notices by the Assessing Officer u/s 133(6) of the Act issued to the concerned parties with whom the assessee made transaction remained unanswered. The Assessing Officer, therefore, held that the assessee had booked bogus loss and accordingly disallowed the same.

4. Even in first appeal, the assessee could not furnish any evidence to prove the aforesaid business transaction and loss thereof. The ld. CIT(A), therefore, dismissed the appeal of the assessee observing as under:

The only issue is regarding disallowance of Rs.23,33,238/- being business loss as claimed by the appellant on purchase and sale of Skimmed Milk Powder (SMP) and Channa. The AO in the assessment order has observed that the appellant is mainly engaged in the business of trading of Agri Commodities, Edible Oil, Vegetable Oil etc. further he detected from the Profit & Loss account for the year under consideration as well as information gathered u/s. 133(6) of the Income-tax Act, 1961, that the following loss has been incurred on purchase and sale:

<i>1 Loss incurred on purchase and sale of Skimmed Milk Powder:</i>	<i>Rs.21,73,505.5/-</i>
<i>2 Loss incurred on purchase and sale of Channa</i>	<i><u>Rs. 1,59,732.0/-</u></i>
<i>Total r/o</i>	<i><u>Rs. 23,33,238.0/-</u></i>

Accordingly, the AO issued a show caused letter to the appellant company to explain the matter along with corroborative documents in connection with the above loss. The appellant's reply as submitted before the AO did not match with the information gathered by the AO u/s. 133(6) of the Act and not supported the claim of the appellant company. The AO after careful perusal of the trend of transaction, nature of items traded and persons involved in trading, pattern of alleged contract, anticipated rates etc. has noted following:

- 1. The appellant initially claimed loss incurred after trading in the purchase and sale of SMP and Channa in ordinary business transaction.*
- 2. Subsequently, it is stated that the said loss incurred in forward contract for purchase and sales.*

3. Stock Register was not produced before the A.O.
4. No copies of challans regarding actual delivery of these above goods were produced before the AO.
5. Purchase and sales were made with the same set of persons namely Anik Industries Ltd, Sharthak Industries Ltd., Teej Impex Pvt. Ltd and Selwel Minerals Pvt. Ltd. year after year. Apart from the said companies, no other company entered into transaction with the appellant company and it appeared that the saver policy of the mother company given the accommodation entries only.
6. The only motive behind these transactions were moving the transactions in systematic manners otherwise why there were only loss involved in almost transactions and why any businessman would go for loss where probability of loss is high.

The AO further asked M/s. Anik Industries Ltd. from whom alleged sales and purchases were made, to provide copy of purchase but the same returned un-served. The AO therefore observed that the appellant company entered into an arrangement in which any transaction, where money has changed hands but any real trading activity did not occur. During the course of the appellate proceedings it has been submitted by the A/R of the appellant that the AO has not brought any independent and reliable evidence. However, it observed that the A/R has also failed to controvert the basic findings of the AO. The AR, vide order sheet noting dated 29.04.2019 stated that no evidences could be furnished for movement and delivery of the commodities (Channa and Skimmed Milk Powder) in which the losses have been shown. The AO has discussed in detail and brought out the factual matrix of circular trading between group entities for inflation of the commodity trading losses. No contra party verification and evidence of any delivery were produced before me. Accordingly, the disallowance made by the AO as claimed by the appellant as business loss of Rs. 23,33,238/- is hereby confirmed.

IV. In view of the above, the appeal of the assessee is treated as dismissed.”

5. After going through the records and after hearing the ld. DR, we do not find any reason to interfere with the above order of the ld. CIT(A). The order of the CIT(A) is accordingly upheld.
6. In the result, the appeal of the assessee stands dismissed.

Kolkata, the 28th June, 2022.

Sd/-
[Girish Agrawal]
Accountant Member

Sd/-
[Sanjay Garg]
Judicial Member

Dated: 28.06.2022.

RS

Copy of the order forwarded to:

1. Vishal Victory Metal Engg. Pvt. Ltd
2. ITO, Ward-7(2), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches