

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH: KOLKATA
श्री राजेश कुमार लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 572/Kol/2020
Assessment Year : 2011-12

ACIT, Circle-43, Kolkata	Vs.	M/s Shyamlal Iron & Steel CO. (PAN: AALFS 6698 F)
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	22.06.2022
Date of Pronouncement / आदेश उद्घोषणा की तिथि	30.08.2022
For the Appellant / निर्धारिती की ओर से	Shri Akshay Ringasia, CA Shri Taraknath Jaiswal, Advocate
For the Respondent / राजस्व की ओर से	Smt. Ranu Biswas, Addl. CITDR

ORDER/ आदेश

Per Shri Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Commissioner of Income Tax(Appeals)-13, Kolkata [hereinafter referred to as 'CIT(A)'] dated 10.02.2020 for the assessment year 2011-12.

2. Though the Registry has pointed out that the appeal is time barred, however, in view of the decision of the Hon'ble Supreme Court in the case of Miscellaneous Application No. 665 of 2021 in SMW(C) No. 3 of 2020, the period of filing appeal during the COVID-19 pandemic is to be excluded for the purpose of counting the

limitation period. In view of this, the appeal is treated as filed within the limitation period.

3. The various grounds of appeal raised by the revenue are as under:

i) Whether on the facts and circumstances of the case and in law, Ld. CIT(A)-13, Kolkata is erred in allowing the relief of the assessee amounting to Rs. 64,75,797/- without appreciating the facts that the assessee has lowered GP rate by showing inflated expenditure and lower income from job charged in its Jamshedpur Branch (Unit-1).

ii) Whether on the facts and circumstances of the case and in law, Ld. CIT(A)-13, Kolkata is erred in allowing relief to the assessee amounting to Rs. 1,37,03,318/- without appreciating the facts that the assessee has shown lower NP rate by adopting inaccurate statement in stock of related to scrap transactions.

iii) Whether on the facts and circumstances of the case and in law, Ld. CIT(A)-13, Kolkata is erred in allowing relief to the assessee amounting to Rs. 7,36,353/- without appreciating the facts that the assessee has shown lower NP rate in Pune Branch by adopting different method of valuation on scrap transaction.

iv) The appellant craves leave to add, amend, alter, vary and or withdraw any or all of the above grounds of appeal.

4. Issue raised in ground no. 1 is against the deletion of addition of Rs. 64,75,797/- by Ld. CIT(A) as made by the AO in respect of Jamshedpur Branch on the ground that the assessee has shown lower GP rate by inflating expenditure and lowering income from job charges.

5. Facts in brief are that the assessee has filed return of income on 30.09.2011 declaring income of Rs. 19,61,440/- which was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act). Thereafter the case of the assessee

was selected for scrutiny under CASS and statutory notices were duly issued and served upon to the assessee. The assessee is a partnership firm with its HQ at Kolkata, and three units one at Jamshedpur doing job work, second too at Jamshedpur doing manufacturing work and third Pune Branch dealing with sale of scrap. Pertinent to state that the head office at Kolkata was also dealing with sale of scrap. During the assessment proceeding the AO called for the various details and books of account along with bills and vouchers and observed that cost of purchase of material during the year vis-à-vis preceding previous year is unreasonably high which was not explained satisfactorily in the assessment proceedings. The AO also noted that the payments were made in cash in many cases and reasons for higher quantity consumption were also not explained. The assessee filed written submissions before the AO dated 23.10.2013 submitting that increase in purchase cost of material was due to substantial increase in the cost of material. The AO was not convinced with the reply of the assessee and finally issued a show cause notice dated 26.09.2013 calling upon the assessee to show cause as to how the books of accounts should not be rejected and additions should not made by taking GP at 62.54% based on the last year GP. Finally the AO made an addition of Rs. 64,75,797/- to the income of the assessee.

6. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee by observing as under:

“5. Observations & Discussion:

5.1. The appellant firm was engaged in the Trading and Supplying Iron Scrap (M.S) to Tata Motors at Jamshedpur through the Head office of the appellant at Kolkata. The appellant firm filed return of income on 30.09.2011 declaring total income of Rs. 19,61,440/-. The appellant has two units at Jamshedpur and also a branch each at Durgapur and Pune. In the Jamshedpur Branch, the appellant des job work processing like decoiling, straightening and cutting of M.S. Coils is done for TELCO ancillaries in firm unit. The Second unit at Jamshedpur manufactures M.S Ingots. Durgapur unit does Billet cutting for Alloys Steel Plant, Durgapur. The Pune Branch, the business of the appellant consists of Trading in Iron and Steel Scraps. The appellant firm filed return of income declaring income of Rs. 19,61,440/- on 30.09.2011.

5.2. Ground of appeal Nos. 01 to 05 pertains to the contention of the appellant that the Books of account of the appellant firm were rejected on the basis of surmises and conjecture and the AO has erred in rejecting Books of Accounts without finding out discrepancies. The

Grounds of Appeals No. 01 to 05 are being taken together in conjunction with Ground of Appeal Nos. 06,07, & 08.

5.3. Ground of Appeal No. 06 pertains to the addition of Rs. 64,75,797/- made by the AO on account of applying GP rate of 62.546% as per the last assessment year on account of unreasonable cost of material consumed and lower job charges as per unit consumption of electricity.

The AO vide his office letter dated 26.09.2013 asked the appellant to give explanation as to why the accounts be not rejected and Gross Profit be not determined @ 62.54% of last year.

The appellant vide letter dated 03.01.2014 contended that in the assessment year under consideration, the material was procured from traders whereas in the last AY the material was procured from mines.

5.3.1. During the course of appellate proceedings the appellant vide his letter dated 25.11.2016 had contended that during the last Assessment Year the raw materials (iron ore dust) was directly purchased from mines whereas during the relevant Assessment Year 2011-12, the whole of purchases were made from traders only. The appellant also furnished the details of purchase which show that average rate of purchase last year was Rs. 2617/- per M.T as against Rs. 5208 per M.T during the relevant AY 2011-12.

Further the appellant has argued that the dispute raised by the AO relates to advance made to M/s Jagannath Cement Works (P) ltd. Jamshedpur to the tune of Rs. 10,00,000/- which is duly reflected in the asset side of the appellant's balance sheet under the heading advance to supplier at Schedule D. Photocopy of the relevant schedule (which is a part and parcel of the appellants, Balance sheet).

The appellant further argued that the AO alleged that payment made to Shri Sant Prakash does not appear in the confirmation issued by Shri Prakash & there was no discrepancy regarding the payment made. Shri Sant Prakash, a supplier at Durgapur who was paid a total sum of Rs. 20,81,865/- through four cheques bearing numbers 513116, 117118 & 119 cleared on 13.05.2010.

It is also observed that the appellant vide his submission dated 20.06.2017 stated that the appellant operates its activities at Jamshedpur under two units i.e. Unit-I and Unit-II, and both the units were located inside a single shed.

The appellant is carrying out job-work in Unit-I and carrying out manufacturing of M. S Ingots by using Sponge Iron and M.S scraps.

The appellant has explained that in the month of May, 2010, electricity charges of Unit-II (Rs. 13,05,438/-) were claimed through mistake as electricity charges of Unit-I (Rs. 33,040/-)

Similarly, in the month of October, electricity charges of Unit-II (Rs. 13,42,706/-) were claimed through mistake, as electricity charges of unit-I of Rs. 29,859/-. This resulted into excess claim of electricity charges at Rs. 25,85,245/- (Rs. 13,05,438/- - Rs. 33,040/-) + (Rs. 13,42,706/- - Rs. 29,589/-).

The appellant has further averred that if this apparent mistake is rectified, the GP rate works out to 44% as compared to 62.55% in the last AY.

5.3.2. *I have carefully gone through the Assessment order, the observations of the AO and the arguments & contentions of the appellant.*

It is seen that there was no overstatement of expenses on power and Fuel or any understatement of the profits in the two units as a whole.

The appellant has also contended that large scale rate-cutting employed by Tata Motors and TISCO and rejections were responsible for the fall in GP in Unit-I from 62.55 to 44% .

The AO has not doubted the genuineness of purchases of purchases and not pointed out any specific defects.

In the case of St. Teresa Oil Mills vs. State of Kerala (1960) 76 ITR 365, it was held that the account regularly maintained in the course of business have to be taken as correct unless there are strong and sufficient reasons to indicate that they are unreliable. The Department has to prove satisfactorily that the account books are unreliable, incorrect or incomplete before it can reject the accounts, which may be done by showing that important purchases are omitted therefrom or proper particulars or vouchers are not forthcoming or the accounts do not include entries relating to a particular class of business. The rejection of accounts should not be done light-heartedly.

5.3.3. *Sub-section 3 of Section 145 lays down the method of correctness or completeness of the accounts of the assessee or where the method of accounting namely cash or mercantile systems or accounting standards as notified by the Central Government, have not been regularly followed by the assessee, the AO may make an assessment in the manner provided in Section 144 of the Act.*

Though the broad parameters have been laid down in the Section itself, yet a definite ground work is a pre-requisite on part of the AO before resorting to the provisions of the Section. It is the duty of the AO to pin point the defect and bring it out clearly and explicitly in the Assessment Order by marshalling the pertinent facts.

In the instant case, the appellant is an individual whose accounts are statutorily audited and there are not adverse observations in this regard. No specific defects have been noticed by the AO.

The appellant has further averred that the AO has not found or pointed out any discrepancy in the Books of accounts and not rejected the Books of accounts. The appellant has placed reliance on the judgment of Hon'ble Calcutta High Court in the case of Swadeshi Commercial Co Ltd. vs. CIT (ITA No. 219 of 2001 dated 18.12.2008).

The AO has produced the reply of the appellant made before him wherein the reasons for the decline have been explained. The explanation of the assessee has not been commented adversely by the AO.

The primary requirement before the AO while estimating the profits is to demonstrate the unreliability of the Books and consequently the profit margin shown by the appellant.

If the books of account are found to be correct and no flow has been detected, it would be incorrect on the part of the AO to reject the GP computed on the basis of such accounts.

The Hon'ble Chandigarh Bench has held in Universal Woolen Mills vs. CIT Ludhiana (ITA No. 616/Chd./2013) that mere fact that the profits were low as compared to the earlier years, by itself is no ground to make addition against the appellant.

The judgments of M/s Swadeshi Commercial Co Ltd. vs. CIT (ITA No. 219 of 2001) and CIT vs. Poonam Rani (2010) 326 ITR 223 (Delhi High Court) have held that mere fall in the GP ratio, in the absence of any cogent reasons could not be a ground to hold that the proper income could not be deducted from the Audited Accounts.

In view of the above mentioned facts of the case, various case laws as discussed, it is observed that the AO was not justified in rejecting the Books of Accounts of Unit-I and applying GP rate of 62.54%. Therefore the addition of Rs. 64,95,197/- is being deleted and the Ground of Appeal No. 06 is allowed.”

7. After hearing rival parties and perusing the material on record including the impugned appellate order, the undisputed facts gathered from the records are that the assessee has its head office at Kolkata, two units were at Jamshedpur and one at Pune. We note that the assessee is engaged in the business of trading and supplying Iron Scraps (M.S) to Tata Motors through Head office at Kolkata. The AO has made addition of Rs. 64,75,797/- in respect of Jamshedpur Unit-1. The assessee has been doing job-work processing like decoiling, straightening and cutting of M.S coils for TELCO ancillaries at Jamshedpur unit-1 and the second unit at Jamshedpur was doing manufacturing of M.S. Ingots by using sponge iron and M.S. Scraps. The AO has made an addition of Rs. 64,75,797/- by substituting preceding previous year GP in the current year for various reasons such as increase in the cost of material and also in various expenses such as electricity power and fuel etc. The Ld. CIT(A) allowed the appeal of the assessee by noting the factual finding of fact that the cost of average rate of purchases in the last year was Rs. 2,617/- per metric ton as against Rs. 5,208/- per M.T during the current year. The Ld. CIT(A) has noted that the assessee has duly explained the advance given to M/s Jagannath Cement Works Pvt. Ltd. which was duly reflected in the balance sheet. Similarly the Ld CIT(A) noted that observations of the AO is also wrong as Shri Sant Prakash was paid a sum of Rs. 20,81,865/- through four cheques which were cleared on 13.05.2010 and duly accounted for. Finally the Ld. CIT(A), after relying various cases laws as discussed hereinabove, the addition of Rs. 64,75,197/- was deleted by holding that AO was not justified in rejecting the books of account without pointing out any reasons and defects herein. We have carefully

perused the reasoning given by the Id CIT(A) s and find that Ld. CIT(A) has taken a correct view while deleting the addition as the AO has just taken the GP of receding previous year despite the assessee explaining the fall in GP. Besides we note that the Ld. CIT(A) has passed a reasoned order explaining as to how the order of AO cannot be sustained discussing various reasons such as increase in cost of raw material / purchase of raw material from the traders in the market which in the previous year was being done from the mines directly and similarly recorded finding various overheads expenses and job work income. In view of this fact, we are inclined to uphold the order of Ld. CIT(A) by dismissing ground no. 1 of the revenue.

8. Issue raised in ground nos. 2 and 3 are against the deletion of addition of Rs. 1,37,03,218/- as made by the AO on account of lower net profit rate shown by the assessee by taking inaccurate stocks in respect of Kolkata Head quarters.

9. Facts in brief are that the assessee has not maintained stock register giving details of quantity, quality and amount of material purchased. Similarly the assessee has not maintained stock register of materials sold to various parties with specific details as to quantity, quality and material items of different ferrous contents, profit thereof and correct value of stock etc. The AO has noted at page no. 5 that there were unverified sales to the extent of 704.330 M.T amounting to Rs. 1,37,03,318/- to unregistered parties which were not be identifiable. Finally the books of accounts were rejected on the ground that the assessee has not maintained stock records mentioning quantity of material purchased and sold to the various parties with quality and contents and substituted the NP of Pune Branch for the Kolkata head quarter which are having different customers, geographical and market conditions and made an addition of Rs. 1,42,16,610/- .

10. In the appellate proceedings, the Ld. CIT(A) deleted the addition by observing the holding as under:

5.4. Ground of Appeal no. 07 pertains to the addition of Rs. 1,42,16,610/- made by the AO by applying net profit rate @ 5.8% of the turnover of the head office and ground of appeal no.

08 pertains to the addition of Rs. 7,36,653/- made by the AO on account of estimated Net Profit @ 6% at Pune Unit.

In respect of Ground of Appeal No. 07, during the course of Appellate proceedings, the AO in absence of any proper account of quantity and amount of material purchased and sold at various different rates, with respect to quality and material items of different rates with having different ratio of ferrous contents. Profits & correct value of closing stock is not determinable.

The AO observed that the unverifiable sales of 704.330 M.T amounting to Rs. 1,37,03,318/- were made to unregistered parties.

5.4.1. The AO issued shown cause dated 26.09.2013 as to why the NP be not determined at 10% of the Gross receipts.

During the course of appellate proceedings, the appellant has contended that the allegedly unverifiable sales made in cash as shown in page 5 of the Assessment order are not undisclosed and these sales have been duly included and credited in the sale accounts.

The appellant has further argued that 28 instances cited by the AO pertain to Late Sant Prakash who has paid the appellant through three cheques.

The AO has not found any discrepancy in the sale except for the observation that sale proceeds were collected in cash. Therefore, there is no defect in the accounts as there were no unaccounted sales.

The case of the AO is that the NP declared by the appellant is less and in the absence of qualitative records, and the instances of sales made in cash warranted the rejection of books of accounts and application of NP rate of 5.8%.

In the Pune Branch, the business of the appellant is trading in Iron and steel scraps with the local companies/entities and while in the Head office, the appellant is engaged in Trading Iron Scrap purchased from third parties by weight including purchase from outside parties and sale of the same to Tata Motors, Jamshedpur.

In respect of ground of Appeal No. 08, during the course of Assessment Proceedings, the AO has observed that single item of inventory has been mentioned as M/s Scrap ad quality wise details of goods traded has not been given. Accordingly, the AO is satisfied that the accounts and stock are found to be not proper and correct profit and correct value of stock is not determinable. Further the AO has mentioned that the assessee failed to produce the required accounts on the fixed date and further proceedings. And accordingly the net profit is determined at 6% as under:

AY	Sales	NP	NP determined @6%	Difference to be added
2011-12	Rs. 2,82,30,718/-	Rs. 9,57,190/-	Rs. 16,93,843/-	Rs. 7,36,653/-

It is observed that the AO has not found any discrepancy in purchases and sales. The AO has not called for the accounts of the appellant with the Tata Motors . There is also no finding that the purchases were bogus:

In CIT vs. Amitbhai Gunwantbhai (1981) 129 ITR 573, 580 (Guj), the Hon'ble Gujarat High Court held that the basic principle is the same in the law relating to income tax as well as in civil law, namely, if there is no challenge to the transaction represented by the entries or to the genuineness of the entries, then it is not open to the revenue or other side to contend that what is shown by the entries is not the real estate of affairs.

When it is not established by the AO that sales are suppressed or any item of purchase is inflated, no gainful purpose is served because value of closing stock will have direct bearing on opening stock (thereby the profits) of next year thereby proportionately adjusting the next year's profit. In the number of legal pronouncements it has been held that merely because stock register is not maintained, books of accounts cannot be rejected. Reference in this regard may be made to the judgments in the case of Ashoke Refractories Pvt. Ltd. vs. CIT (2005) 279 ITR 457 (Cal), ACIT vs. Ravi Agricultural Industries (2009) 316 ITR AT (Agra).

The Appellant has further averred that the AO has not found or pointed out any discrepancy in the Books of accounts and not rejected the books of accounts. The appellant has placed reliance on the judgment of Hon'ble Calcutta High Court in the case of Swadeshi Commercial Co Ltd. vs. CIT (ITA No. 219 of 2001 dated 18.12.2008).

5.4.2. I have carefully gone through the Assessment Order, the observations of the AO ad the arguments & contentions of the appellant. No specific defects have been noticed by the AO to include that there was a leakage of revenue on account of marginal decline in the GP rate.

The AO has produced the reply of the appellant made before him wherein the reasons for the decline have been explained. The explanation of the assessee has not been commented adversely by the AO.

The primary requirement before the AO while estimating the profits is to demonstrate the unreliability of the Books and consequently the profit margin shown by the appellant.

If the books of account are found to be correct and no flow has been detected, it would be incorrect on the part of the AO to reject the GP computed on the basis of such accounts.

The Hon'ble ITAT Chandigarh Bench has held in Universal Woolen Mills vs. CIT Ludhiana (ITA No. 616/Chd./2013) that mere fact that the profits were low as compared to the earlier years, by itself is no ground to make addition against the appellant.

The Judgments of M/s Swadeshi Commerical Co. Ltd. vs. CIT (ITA No. 219 of 2001) and CIT vs. Poonam Rani (2010) 326 ITR 223 (Delhi-High Court) have held that mere fail in the GP ratio, in the absence of any cogent reasons could not be a ground to hold that the proper income could not be deducted from the Audited Accounts.

In view of the above mentioned facts, various case laws as discussed, it is observed that the AO was not justified in rejecting the Books of Accounts of Head Office and applying NP rate of 5.8%. Therefore, the addition of Rs. 1,37,03,318/- is deleted and Ground of Appeal No. 07 is deleted.

Further in view of the above mentioned facts, various case laws as discussed, it is observed that the AO was not justified in making addition of Rs. 7,36,653/- on estimated NP rate of 6%. Therefore, the addition of Rs. 7,36,653/- is deleted and the Ground of Appeal No. 08 is deleted."

11. We have perused the material on record and heard the rival contentions. We find that the AO has applied net profit @5.8% to the turnover of the head office thereby making an addition of Rs. 1,42,16,610/- on the ground that the assessee has not maintained quantitative/qualitative details of stocks and also that unverifiable sales of 704.330 M.T amounting to Rs. 1,37,03,318/- to parties which were not identifiable. We note that while deleting the addition the Id CIT(A) recorded a finding a fact that the AO has not found any discrepancy/defects in the books of accounts and observed that the sales and purchases were made in cash. The Ld. CIT(A) also noted that there were no finding of the AO as to the fact that the sales were bogus and non genuine . The Ld. CIT(A) has noted that the similarly in respect of Pune Branch which was dealing in iron and steel scrap with local companies whereas head office was engaged in dealing with trading in Iron scrap purchased from third parties and selling it to Tata Motors, Jamshedpur and thus rejected the observations of the AO that the assessee has not mentioned the job and scrap thereof and also the application of NP of 6% in the Pune Branch thereby making an addition of Rs. 7,36,653/-. We observe the Id CIT(A) has passed a very reasoned and speaking order while deleted the addition and therefore we do not find any infirmity in the order of Ld. CIT(A) and accordingly upheld the same. Ground nos. 2 and 3 are dismissed.

12. In the result, the appeal of the revenue is dismissed.

Order is pronounced in the open court on 31st August, 2022

Sd/-

(Sonjoy Sarma/ संजय शर्मा)
Judicial Member / न्यायिक सदस्य

Sd/-

(Rajesh Kumar / राजेश कुमार)
Accountant Member / लेखा सदस्य

Dated: 31st August, 2022

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- ACIT, Circle-43, Kolkata
2. Respondent –M/s Shyamlal Iron & Steel Co., 120A, Manicktala Main Road,
Kolkata-700054
3. Ld. CIT(A)-13, Kolkata (Sent through e-mail)
4. PCIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata