

THE INCOME TAX APPELLATE TRIBUNAL  
"C" Bench, Mumbai  
Shri B.R. Baskaran (AM) & Shri. Rahul Chaudhary (JM)

I.T.A. No. 4280/Mum/2016 (A.Y. 2011-12)

ACIT-3(2)(2) Room No. 674 6 <sup>th</sup> Floor Aayakar Bhavan M.K. Road Mumbai-400 020.	Vs.	M/s. Omricron Steel Traders Pvt. Ltd. 307, Maker Chamber V Nariman Point Mumbai-400 021.  PAN : AABCO2886J
(Appellant)		(Respondent)

Assessee by	None
Department by	Shri Senthil Kumaran, Sr. AR
Date of Hearing	06.09.2022
Date of Pronouncement	07.09.2022

ORDER

Per B.R.Baskaran (AM) :-

The Revenue has filed this appeal challenging the order dated 17.3.2016 passed by learned CIT(A)-8, Mumbai and it relates to A.Y. 2011-12.

2. None appeared on behalf of the assessee. We notice that notices of hearing sent to the assessee by registered post on several occasions have been returned back by the postal department. Hence, on the earlier occasion, the Assessing Officer was directed to serve the notice to the assessee. The Assessing Officer has served the notice by affixture, since it was noticed that the assessee was not available in the known addresses. Under this circumstance, we deem it proper to dispose of the appeals ex-parte, without presence of the assessee.

3. The Revenue is aggrieved by the decision of learned CIT(A) in deleting the additions made by the Assessing Officer by disallowing business loss, transport expenses and finance charges etc.

4. The Learned DR submitted that the assessee company is engaged in the business of trading in MS flat bar, MS round bar, MS angle etc. It was noticed by the Assessing Officer that the assessee has purchased goods from the companies belonging to "Topworth Group" and sold the goods to the companies belonging to the very same group at a very marginal profit. The Assessing Officer has recorded that the assessee company has made almost 78% of the aggregate amount of purchases from Topworth Group and the sales made to the Topworth Group consisted of 73% of the total sales. Since the assessee had incurred various expenses, the marginal profit earned on sales was not sufficient to meet the above said expenses. Hence it was noticed that the assessee has incurred net loss at the year end. Accordingly the Assessing Officer took the view that the transactions recorded by the assessee are not genuine. Hence disallowed various expenses claimed by the assessee and also loss declared by it. The Assessing Officer accordingly, determined the total income of the assessee at Rs. 2,18,72,630/- as against returned income of Rs. 59,22,160/-

5. In the appellate proceedings, the learned CIT(A) deleted the disallowance mainly on the ground that the Assessing Officer has not rejected the books of account.

6. The Learned DR submitted that the question of rejection of books of account shall arise only when the transactions of the assessee are accepted as "genuine", but the books of account were found to be unreliable. He submitted that, in the instant case, the Assessing Officer has taken the view that the transactions entered by the assessee are not genuine and hence there is no necessity to record a separate finding that the books are not reliable. Accordingly, the learned DR submitted that the learned CIT(A) was not correct in deleting the disallowances. Accordingly, the learned DR submitted that the order passed by learned CIT(A) should be reversed.

7. We have heard learned DR and perused the record. We noticed that the Assessing Officer has taken the view that the transactions entered by the assessee are not genuine, since most of the purchases have been made by the assessee from the companies belonging to Topworth Group and most of the sales have been made to the companies belonging to the very same group. When the entire transactions entered by the assessee were considered as not genuine, as rightly pointed out by learned DR, there is no requirement to mention separately on rejection of books of account. We agree with the contentions of Ld D.R that the opinion so reached by the Assessing Officer on genuineness of transactions itself would mean that the books of account have been rejected. In view of the above, the basis on which learned CIT(A) has granted relief to the assessee, in our view, would fail. Under these set of facts, we are of the view that all the issues contested by the Revenue require fresh adjudication at the end of the learned CIT(A). Accordingly, we set aside the order passed by learned CIT(A) and restore all the issues contested before us to his file for adjudicating them afresh on merits, after affording adequate opportunity of being heard to the assessee.

8. In the result, appeal filed by the Revenue is treated as allowed for statistical purposes.

Order pronounced in the open court on 07.09.2022.

Sd/-  
(RAHUL CHAUDHARY)  
JUDICIAL MEMBER

Sd/-  
(B.R. BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 07/09/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai

6. Guard File.

//True Copy//

PS

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai