

आयकर अपीलिय अधिकरण, कोलकाता पीठ “सी”, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA

श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्यके समक्ष

[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 1778/Kol/2019

Assessment Year: 2014-15

DCIT, Circle-5(1), Kolkata	Vs.	M/s Kesoram Industries Ltd. (PAN: AABCK 2417 P)
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	19.10.2022
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	17.11.2022
For the Appellant/ निर्धारिती की ओर से	Shri Akkal Dudhwewala, A.R
For the Respondent/ राजस्व की ओर से	Shri Amal Sudhir Kamat, CIT

ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-22, Kolkata (hereinafter referred to as the Ld. CIT(A)”) dated 28.02.2019 for the AY 2014-15.

2. We observe from the records before us that this appeal has already been decided by the Co-ordinate Bench vide order dated 28.10.2021. Thereafter the revenue moved a miscellaneous application that ground no. 5 in the revised grounds of appeal has not been adjudicated and accordingly order dated 28.10.2021 was recalled to that limited extent of adjudicating ground no. 5 vide order dated 07.04.2022.

Therefore only ground no. 5 is pending for adjudication in this appeal. For the sake of convenience ground no. 5 is reproduced as under:

“5. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred on facts and law in granting relief on account of loss disallowed by the AO u/s 68 of the Income Tax Act, 1961.”

3. Facts in brief are that the AO during the course of assessment proceedings referred to information received from DDIT(Inv)-III, Gurgaon which revealed that M/s Spaze Group was involved in taking purchase accommodation entries from various concerns and the assessee is one of beneficiary of that racket. The AO observed during the year that the assessee has received Rs. 63,50,000/- from Sri Sai Kripa Enterprises and accordingly a show cause notice was issued to the assessee. The assessee replied the said show cause notice vide letter dated 8.12.2017 stating therein that the assessee has made scrap sales to the aforesaid party in relation to its tyre plant at Laksar, Uttarakhand and the transactions were entered into normal course of business and were duly assessed and offered to tax by the assessee. The assessee filed before the AO copies of ledger of the party, copy of invoices and the details of traces reflecting the tax collected at source etc. However the AO added the same to the income of the assessee u/s 68 of the Act by holding that the motive of the assessee was malafide.

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

18. Findings & Decision:

1. I have examined the submissions filed by the Ld. A.R.s for the appellant and the various evidences placed on record. I have also carefully perused the observations and findings recorded by the Ld. A.O. From the Ld. A.R's submissions, I find that during the Financial Year 2014-15 the appellant had sold scrap which inter alia included scrap worth Rs. 63,50,000/- sold to M/s Sai Kripa Enterprises. In the course of assessment the appellant was called upon to furnish the details of such sale of scrap, an in compliance thereto, the appellant furnished the details as called for. In the impugned order by referring to the alleged information received from Investigation Wing, Kolkata held that the motive of transaction was malafide and therefore added back the same u/s 68 of the Act,

2. After carefully examining 'the documents and evidences, I find that the only ground on which the Ld. AO made the addition u/s 68 is apparently unsustainable. In the first place I agree with the contention of the Ld. AR that the realization of Rs.63,50,000/- upon sale of scrap had already been credited to the Profit & Loss Account and formed part of the income offered to tax in the relevant AY 2014-15 and therefore no further addition on this count was warranted. When the sum in question had already been offered to tax by the appellant company; the action of Ld, AO again adding the same amount to the total income was clearly unsustainable and ex-facie amounted to double addition. On this score alone the impugned addition is directed to be set aside.

3. It is further noted that the Ld. AO has principally referred to certain information received from Investigation Wing based on which he alleged that the transaction involving sale of scrap to M/s Sai Kripa Enterprises was bogus. It is however observed, that at no point of time did the Ld. AO disclose the specifics of the information or the basis on which he arrived at such conclusion. Even the repeated requests of the appellant seeking the details of such information were ignored. In the circumstances I find that the adverse inference drawn by the Ld. AO solely on the basis of alleged information received from Investigation Wing, details of which were never disclosed either to the appellant or in the impugned order; was unsustainable.

4. Per contra I find that when called upon to explain the identity, creditworthiness and genuineness of the transaction, the appellant had furnished before the Ld. AO numerous documentary evidences to establish, three limbs of Section 68 of the Act. From the documents placed before me, it was found that the appellant had furnished the copy of the invoice, details of receipt of payment, details of payment of VAT and collection of tax at source. From these documentary evidences it therefore appeared that the appellant had furnished all relevant documentary evidences, which were required to establish the veracity of the transaction. Even though these material evidences was brought on Ld. AO's record, he did not bring any adverse material to prove that the explanation furnished by the appellant was false or there was any material infirmity therein. Since the appellant had proved that the genuineness of sale of scrap and also offered the same to tax and there being no contrary material brought on record by the Ld. AO, in my opinion the impugned addition of Rs,63,50,000/-was unjustified. The Ld.AO is accordingly directed to delete the same in full. This ground therefore stands allowed."

5. After hearing the rival parties and perusing the material on record, we find that the assessee has received Rs. 63,50,000/- from Sri Sai Kripa Enterprises on account of sale of scrap of tyres at its Laksar Plant, Uttarakhand and has duly shown the said income as part of sales and thus offered the same to tax. The AO , on the basis of information from Investigation Wing, held that the said transactions were bogus. We note that since the assessee has shown this receipt as income and therefore any further addition would amount to double addition of the same amount which is not permissible under the Act and the Ld. CIT(A) has given a finding a fact to this effect in para 2 above. We also note that the Ld. CIT(A) has given a finding of fact that the

AO has treated the amount as bogus on the basis of report from Investigation Wing which has not been supplied to the assessee despite repeated requests made to the AO which itself is bad in law and is against the principles of natural justice as no information can be used against the assessee to make addition without confronting the same to the assessee. We also observe that the Ld. CIT(A) has also recorded a finding that the assessee has furnished all the documentary evidences and fully established three limbs of Section 68 of the Act by furnishing copies of invoices, details of receipts, details of payment of VAT and collection of tax at source etc. on which the AO has not commented at all and also that the AO has not brought on record any evidences or material to the contrary. Under the circumstances, we do not find any infirmity in the order of the Ld. CIT(A) and consequently ground no. 5 of the revenue is dismissed by upholding the order of Ld. CIT(A) on this issue.

7. In the result, the appeal of the Revenue is dismissed as discussed above.

Order is pronounced in the open court on 17th November, 2022

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

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

Dated: 17th November, 2022

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- DCIT, Circle-5(1), Kolkata
2. Respondent – M/s Kesoram Industries Ltd., Birla Building, 8th Floor, 9/1, R.N. Mukherjee Road, Kolkata-700001.
3. Ld. CIT(A)-22, Kolkata (Sent through e-mail)
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata