

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F" DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.1668/DEL/2018
Assessment Year 2003-04

Pondy Metals & Rolling Mills (P) Ltd., 5 th Floor, E-12, Jawahar Park, Devli Road, Khanpur, New Delhi.	Vs.	ACIT, Circle-20(1), New Delhi.
TAN/PAN: AAACP4826C		
(Appellant)		(Respondent)

Appellant by:	None		
Respondent by:	Shri S.M. Singh, Sr.DR		
Date of hearing:	16	11	2022
Date of pronouncement:	25	11	2022

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the Assessee against the order of the Commissioner of Income Tax (Appeals)-XVII, New Delhi ['CIT(A)' in short] dated 29.11.2007 arising from the assessment order dated 27.03.2006 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2003-04.

2. The grounds of appeal raised by the assessee read as under:

"1. That the learned Commissioner of Income Tax (Appeals)-XVII, New Delhi has erred both in law and on facts in upholding determination of income of the appellant company at Rs. 1,30,20,155/- as against declared loss of Rs. 12,93,555/-.

2. That while upholding order of assessment, the learned

Commissioner of Income Tax (Appeals) has also erred both in law and on facts in sustaining disallowance of Rs. 1,30,20,155/- out of purchases made by the appellant under section 40A(2)(b) of the Act.

2.1 That while upholding the aforesaid disallowance, the learned Commissioner of Income Tax (Appeals) has failed to appreciate the facts and circumstances of the case of appellant and statutory provisions of law and hence disallowance made and confirmed is not only arbitrary and unjustified but also unsustainable.

2.2 That while upholding the aforesaid disallowance, the learned Commissioner of Income Tax (Appeals) has not granted any meaningful and effective opportunity to the appellant and therefore, order so made is vitiated.

2.3 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that there was a reasonable cause for not appearing on the dates fixed for hearing and as such, the learned Commissioner of Income Tax (Appeals) ought to have not proceeded to decide the appeal ex-parte. In any case, having done so, he ought to have not mechanically confirmed the basis adopted by the learned Assessing Officer to make the disallowance and therefore, order so made is untenable.

2.4 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that there was no justification in concluding that “there was no justification for concluding that the purchases, as recorded, were not validly made at the market price and as such the purchase price was duly supported by necessary evidence and as such could not be disregarded. There was absolutely no valid justification to hold that the payments made for the purchase of material was either excessive or reasonable having regard to the business needs of the appellant company and that such purchases made were hit by the provisions of sec. 40A(2)(b)(iv) of the I.T. Act thereby giving rise to the addition of Rs. 1,30,20,155/- and as such, the said finding is misconceived, misplaced apart from being contrary to records.

2.5 That the learned Assessing officer as well as Commissioner of Income Tax (Appeals) has erred both in law and on facts of the case by not allowing the set off of unabsorbed business loss and depreciation relating to earlier years against the business income of the current year.

2.6 That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding the levy of interest of Rs. 18,242/- under section 234A of the Act, interest of

Rs. 16,84,740/- u/s 234B of the Act and interest of Rs. 32,764/- u/s 234D of the Act which are not leviable on the facts and circumstances of the case of the appellant company.”

3. When the matter was called for hearing, none appeared for the assessee. It appears from the record that in the first hearing on 29.12.2019, the assessee was represented by an Advocate however thereafter none has attended or sought adjournment. It is further noticed that the assessee has also not availed the opportunities before the CIT(A) and the matter was proceeded *ex-parte* even before the CIT(A). Having regard to the totality of the circumstances and lackadaisical conduct of the assessee, the matter is proceeded *ex-parte* in the absence of the assessee.

4. On perusal of record, it is observed that the assessee has not filed the statement of facts along with the grounds of appeal filed before the CIT(A). The stand of the assessee on factual position is therefore not known. The Assessing Officer in the course of the assessment observed that the assessee has made purchases from persons mentioned under Section 40A(2)(b) of the Act namely M/s. Mittal Ispat Ltd and Sharda Casting Ltd. On appraisal of facts by Assessing Officer towards purchase prices by the assessee from the sister concern, the Assessing Officer found that the assessee has paid higher prices towards purchase from sister concern. The Assessing Officer accordingly invoked the provision of Section 40A(2)(b) of the Act and made an addition of Rs.1,30,20,155/- have excess above the fair value of the purchases made. The assessed income was accordingly increased on this count.

5. Aggrieved, the assessee preferred appeal before the CIT(A). From the first appellate order, it is seen that despite several

notices, the assessee has failed to attend the proceedings and also not filed any written submission. The CIT(A) accordingly proceeded *ex-parte* and confirmed the action of the Assessing Officer in following words:

4. Ground Nos. 1 to 8 are directed against the addition of Rs. 1,30,20,155/- on account of purchases from persons covered by sec. 40A(2)(b)(iv). The facts as seen from the order of the AO are that the appellant made certain purchases from Mittal Ispat Ltd. and Sharda Casting Ltd. The details filed in respect of Sharda Casting Ltd. showed that the appellant company purchased raw materials (ingots) from other persons also, the details of which have been given by the AO in the Annexure to the assessment order. It was found by the AO that the purchase price from Sharda Casting Ltd. was Rs.13,172/- p.m.t. whereas the same was much less from the other parties. It was noticed that the appellant had taken the average purchase price from other concerns at Rs. 12,347/- p.m.t. which is lower by Rs. 835/- p.m.t. The AO found that Sharda Casting Ltd. made total sales of 23,409.485 m.t. during the relevant year, out of which sales of 15,593.800 mt. were made to the appellant company. It is obvious from the above that Sharda Casting Ltd. sold goods to the appellant company at a higher rate than the sale price to other parties. It was accordingly inferred by the AO that the purchase price was inflated by the appellant to the tune of Rs.1,30,20,155/- (Rs.835 X 15,593.800 m.t.), thereby reducing the profit to this extent.

4.1 I find from the proceedings before the AO that the appellant stated that the appellant company purchased raw material from the two companies at the same price at a particular date, and purchases were made from that concern at prevailing market prices. However, this contention of the appellant was not found acceptable by the AO in view of the fact that the rate of sales to the appellant was higher than that in the case of other parties. On these facts, the AO came to the conclusion that the provisions of sec. 40A(2)(b) of the Act were clearly attracted in the case of the appellant. Therefore, an addition of Rs.1,30,20,155/- was made to be income of the appellant.

4.2 I have carefully perused the order of the AO and have gone through the facts of the case and material available on record. On the basis of the facts brought out by the AO, it is apparent that the appellant company has inflated purchase price in respect of purchases made from the connected companies. I

am of the view that the provisions of Sec. 40A(2)(b) of the Act have been rightly invoked by the AO. On overall consideration of the facts and the material on record, I do not see any reason to interfere with the order of the AO on this account, which is hereby upheld. These grounds of appeal are, accordingly, dismissed.

6. Further aggrieved, the assessee preferred appeal before the Tribunal.

7. As noted above multiple notices were sent at the address provided in appeal memo by the assessee. However, no assistance was obtained from the assessee to support its grievance.

8. On perusal of the first appellate order shows that the assessee company has failed to rebut the allegation of the Assessing Officer that the assessee has inflated the purchase price in respect of purchases made from sister concerns. In the absence of any evidence contrary to the observations made by the Assessing Officer, the CIT(A) has declined to interfere with the action of the Assessing Officer. In the absence of any rebuttal on behalf of the assessee, we are also in no position to record a different finding. We thus decline to interfere.

9. In the result, the appeal of the assessee is dismissed *ex-parte*.

Order pronounced in the open Court on 25/11/2022.

Sd/-

**[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER**

DATED: /11/2022

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Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**