

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

**BEFORE
SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 358/Del/2017
Asstt. Year : 2013-14

Vishnu Aggarwal, H.No. 1669, Sector-55 Faridabad PAN AGAPA1634N	Vs.	ITO, Ward-11(4) Faridabad
(Appellant)		(Respondent)

Assessee by:	Shri K.C. Singhal, Advocate Shri Umesh Seth, Advocate
Department by:	Shri Umesh Takyar, Sr. DR Shri Sumit Kumar Verma, Sr. DR
Date of Hearing	07.04.2022 06.01.2023
Date of Pronouncement	06.04.2023

ORDER

PER ASTHA CHANDRA, JM

The appeal by the assessee is directed against the order dated 23.12.2016 of the Ld. Commissioner of Income Tax (Appeals)-Faridabad ("**CIT(A)**") pertaining to Assessment Year ("**AY**") 2013-14.

2. The assessee has taken following grounds :-

"1. *That the Learned Commissioner of Income Tax (Appeals), Faridabad, has erred in law as well as on facts and in circumstances of the case in upholding the addition of Rs. 39,17,853/- made by the Assessing Officer by rejecting books of accounts and by presuming Gross Profit*

Rate at 4% against declared by the assessee at 0.69% without appreciating facts of the case.

2. *That the Learned Commissioner of Income Tax (Appeals), Faridabad, has erred in law as well as on facts and in circumstances of the case in upholding GP addition without considering the verdicts of various courts relied by the assessee during the course of appellate proceedings.*
3. *That the Learned Commissioner of Income Tax (Appeals), Faridabad, has erred in law as well as on facts and in circumstances of the case in upholding GP addition without appreciating material available on record.*
4. *That the Learned Commissioner of Income Tax (Appeals), Faridabad, has erred in law as well as on facts and in circumstances of the case in partly deleting addition under section 2(22)(e) without appreciating the facts that amount received by the assessee was on account of business transaction.”*

3. Ground No. 1, 2 & 3 relate to Gross Profit (“GP”) addition of Rs. 39,17,853/- made by the Ld. Assessing Officer (“AO”) which has been upheld by the Ld. CIT(A).

3.1 The assessee is an individual. He is proprietor of M/s. Shri Hari Metals which deals in metal scrap. He is also a Director in M/s. Singhal Metalloys Pvt. Ltd. having its factory in Faridabad and registered office in Nand Nagari, Delhi.

3.2 During the previous year relevant to AY 2013-14 the assessee declared GP at Rs. 8.14 lakh on total turnover of Rs. 11.83 crore. It gave GP rate of 0.69% as against GP rate of 0.77% of last year (A.Y. 2012-13) and GP rate of 4.19% of year before last (A.Y. 2011-12). The Ld. AO considered the GP rate low. For the reason recorded by him, the Ld. AO rejected the book result and applied the provisions of section 145(3) of the Income Tax Act, 1961 (**the “Act”**). He considered GP rate at 4% reasonable as determined by him in the immediately preceding year. On that basis, the GP was worked out at Rs. 47,32,332/- as against GP declared at Rs. 8,14,479/- resulting in GP addition of Rs. 39,17,853/- to the income of the assessee.

4. Aggrieved, the assessee appealed before the Ld. CIT(A) who upheld the impugned addition by observing in para 7 of his order as under :-

“7. I have carefully considered the facts of the case and gone through the submissions filed by the counsel of the appellant during the appellate proceedings and the order of the AO. Here, I find that the same issue had come up before me in the appellant's own case while adjudicating it for the AY 2012-13 also. The arguments of the AO while making the addition and the written submissions of the appellant for the period under consideration are also identical to that of the preceding assessment year. The only difference is in the period where the dip in the gross profit has been observed in the two assessment years. During the preceding assessment year the dip was observed at the fag end of that assessment year i.e. in the last two months Feb. and Mar. whereas during the period under consideration the dip has been observed in the middle of assessment year i.e. in the month of Aug., Sep. and Oct. Hence going by the same explanation given by me in the appellant's own case decided by me vide appeal No. 09/2015-16 dated 10.11.2016, I uphold the addition made by the AO on this issue and dismiss this ground of the appellant.”

5. This has brought the assessee before the Tribunal.

5.1 The Ld. AR of the assessee submitted that against the order dated 10.11.2016 of the Ld. CIT(A) for AY 2012-13, the assessee had gone in appeal before the Tribunal on the identical issue of GP addition and the Tribunal vide its order dated 26.04.2019 in ITA No. 357/Del/2017 deleted the GP addition of Rs. 23,30,490/- made by the Ld. AO which was confirmed by the Ld. CIT(A). A copy thereof is available at pages 16-22 of the paper book. The Ld. DR supported the orders of the Ld. AO/ CIT(A).

5.2 In AY 2013-14 the issue involved, the arguments of the Ld. AO, written submissions of assessee and the findings of the Ld. CIT(A) remain the same as in the preceding AY 2012-13. The observations and findings of the Tribunal in its order (supra) for AY 2012-13 are contained in para 6 thereof which is reproduced hereunder :-

“6. I have heard both the parties and perused the records. I find that the assessee was engaged in business of wholesale trading in Aluminium scrap and Aluminium ingots. He declared gross profit @ 0.77 % as against 4.19% in the preceding year. The Books of a/c were duly audited and there was no adverse remark regarding books maintained by him. It is noted that all purchases & sales were supported by vouchers. Copies of the same were furnished before the AO along with letter dated 17.02.2015 and no quantitative details of stock were maintained on day to day basis. However, such details were furnished before AO vide letter dated 23.2.2015. It is also

noted that closing stock was valued on the basis of FIFO method at cost. It is also noted that AO has observed that the GP rate declared by the appellant was much lower than declared in the preceding year. As per AO, the assessee neither maintained stock register nor declared any quantitative details of goods and no books of accounts with purchase 86 sale bills were produced for verification. AO also noted that M/s Sai Metal from whom purchases were made was not found as per inspector's report and according to him the purchases from Haryana Metal Traders 8s Sai Metals were not found to be genuine. However, the fact of the case are that the books of a/c are duly audited raises a presumption to the correctness of such books unless proved otherwise I note that maintenance of day to day stock register is not the legal requirement as held by the Hon'ble Delhi HC in CIT-v-Jacksons House 198 Taxman 385; Maruti Udyog Ltd-v-CIT) 253 Taxman 60(Del) as well as of Guj HC in Jaytick Intermediates (P) Ltd 242 Taxman 319. However, quantitative details along with invoices were furnished before the AO vide letter dated 17.02.2015. Hence, no adverse inference could be drawn by AO. It is found that that the closing stock was quantified 86 valued at cost as per FIFO method which is recognised method. The details with vouchers were also filed before AO vide letter dated 17.02.2015. In my view that the AO is also not justified in observing that purchases were not found genuine. After perusing the para no. 2.5 of the assessment order, I find that the purchases were made by two parties namely M/s Haryana Metal Traders & Sai Metals. The enquiry notice sent to Haryana Metal Traders was served and admitted by the AO himself. Further both the parties were registered with Excise & Taxation Department which is proved by the invoices itself. It is also noted that payments were also made through banks.

6.1 Also it is settled law that section 145(3) cannot be invoked on the mere ground that GP rate is low as compared to earlier year, as held in the decision of Hon'ble P&H High Court in Surinder Kumar Charanjit Kumar 282 ITR 78 PH, wherein it has been held that "a low GP rate may not per se lead to an inference that accounts are false, but coupled with other relevant circumstances, it does afford a sufficient ground for rejection of the accounts and estimation of profits."

6.2 Keeping in view of the facts and circumstances of the case and respectfully following the precedents, the addition in dispute made by the AO and confirmed by the Ld. CIT(A) is hereby deleted and accordingly the ground No. 1 to 3 are allowed."

6. Respectfully following the order (supra) of the Tribunal in the assessee's own case for AY 2012-13, we delete the impugned GP addition of Rs. 39,17,853/- made by the Ld. AO and upheld by the Ld. CIT(A). Accordingly, Ground No. 1 to 3 are decided in favour of the assessee.

7. Ground No. 4 relates to addition of Rs. 16,04,242/- as deemed dividend under section 2(22)(e) of the Act made by the Ld. AO which has been restricted to Rs. 12,29,050/- by the Ld. CIT(A). The Ld. AO found from

the audit report of the proprietary concern of the assessee that he had availed of loan or deposit of Rs. 1,60,25,000/- from M/s. Singhal Metalloys Pvt. Ltd. in which company the assessee is also a Director having substantial shareholding. The same liability of Rs. 1,60,25,000/- as at year end has also been shown in the audited balance sheet of the assessee under the head "unsecured loan". The assessee had filed a copy of the balance sheet of the company, where too the same amount is seen to appear as a loan/advance to the proprietary concern of the assessee. On query, it was contended that the assessee has regularly supplied the material in the year under assessment and the assessee has also supplied the material in the year ahead i.e. financial year 2013-14 also for which copy of account have been furnished. It was also stated that the classification in the balance sheet has been taken inadvertently and the same may not be the consideration to consider the amount advanced towards unsecured loans. Although while filing the income tax return the assessee has considered the advance from M/s. Singhal Metalloys Pvt. Ltd. and shown in the sundry creditors which comes to Rs. 3,14,69,419/- (including 1,60,25,000/- of M/s. Singhal Metalloys Pvt. Ltd.).

7.1 The contention of the assessee was found to be entirely against the facts of the case. Relying on the findings of the Ld. AO which the Ld. CIT(A) extracted in para 11 of his order, the Ld. CIT(A) upheld the applicability of section 2(22)(e) to the facts of the assessee's case. This has brought the assessee before us and Ground No. 4 relates thereto.

8. The Ld. AR emphasised that assessee's proprietary concern, M/s. Shri Hari Metals and the company in which he is director having substantial interest, M/s. Singhal Metalloys Pvt. Ltd., are in the same line of business. Both the concerns deal in metal scrap. Our attention was drawn to the ledger account of M/s. Singhal Metalloys Pvt. Ltd. for the period ending on 31st March, 2013 appearing in the books of M/s. Shri Hari Metals (page 23 of the paper book) showing a credit balance of Rs. 1,60,25,000/- as also ledger account of M/s. Singhal Metalloys Pvt. Ltd. in the books of Shri Hari Metals

for the period 01.04.2013 to 31.03.2014 relevant to the subsequent AY 2014-15 (pages 32-42 of the paper book) showing closing balance of Rs. 1,61,69,813/-. Pointing out to the month-wise daily summary sheet of credits & debits and balances (pages 24-31 of the paper book) pertaining to the period from 01.04.2013 to 31.03.2014, it was submitted that the assessee has been regularly supplying material to the company, M/s. Singhal Metalloys Pvt. Ltd. and in turn the said company has been giving advance to the assessee's proprietary concern, M/s. Hari Metals. The Ld. AR relied on the decisions which lay down the law that section 2(22)(e) does not apply to business transactions. The CBDT Circular No. 19/2017 dated 12.06.2017 was also cited wherein it is stated that it is settled position that trade advances, which are in the nature of commercial transactions would not fall within the ambit of the word 'advance' in section 2(22)(e) of the Act. The Ld. DR supported the findings of the Ld. AO/CIT(A).

9. We have carefully considered the rival submissions and perused the material on records. We find that in his appeal for AY 2012-13 before the Tribunal the ground relating to a part deletion of addition under section 2(22)(e) was not pressed by the assessee. Para 2 of Tribunal's order dated 26.04.2019 in ITA No. 357/Del/2017 for AY 2012-13 refers. However, before us the Ld. Counsel of the assessee submitted that the case of the assessee is covered in favour of the assessee by the decision of Hon'ble Jurisdictional High Court of Delhi in CIT vs. Creative Dyeing & Printing (P.) Ltd. (2009) 318 ITR 476 (Delhi). We have perused the decision (supra) of the Hon'ble Delhi High Court wherein the Hon'ble Delhi High Court quoted with approval the following observations of the Tribunal in para 9 thereof and held that the amounts advanced for business transaction between the parties would not fall within the definition of deemed dividend under section 2(22)(e) of the Act:-

"From the ratio laid down in above cases and on the basis of judicial interpretation of words, 'Loans' or Advances', it can be held that section 2(22)(e) can be applied to 'Loans' or Advances' simplicitor and not to those transactions carried out in course of business as such. In the course of carrying on business transaction between a company and a stockholder, the

company may be required to give advance in mutual interest. There is no legal bar in having such transaction. What is to be ascertained is what is the purpose of such advance. If the amount is given as advance simplicitor or as such per se without any further obligation behind receiving such advances, may be treated as 'deemed dividend', but if it is otherwise, the amount given cannot be branded as 'advances' within the meaning of deemed dividend under section 2(22)(e). Just as per clause (ii) of section 2(22)(e), dividend is not to include advance or loan made by a company in the ordinary course of business where the lending of money is a substantial part of the business of the company advance in the ordinary course of carrying on business cannot be considered as 'dividend' within the meaning of section 2(22)(e). By granting advance if the business purpose of the company is served and which is not the sum, which it otherwise would have distributed as dividend, cannot be brought within the deeming provision of treating such 'Advance' as deemed dividend."

Similar view has been taken by Bombay High Court in CIT vs. Nagindas M. Kapadia 177 ITR 393 (BOM). The CBDT Circular No. 19/2017 dated 12.06.2017 also supports the view canvassed by the Ld. AR. The facts available on record do suggest that there has been business transaction between the proprietary concern, M/s. Shri Hari Metals and the Company, M/s. Singhal Metalloys Pvt. Ltd. It may not be out of place to mention that the decision (supra) of the Hon'ble Delhi High Court in Creative Dyeing & Printing (P.) Ltd. has been affirmed by the Hon'ble Supreme Court and the appeal of the Revenue has been dismissed in SLP No. 8558 of 2010 on 07.07.2010. Following the decisions (supra), we set aside the order of the Ld. AO/ CIT(A) and decide this Ground No. 4 in favour of the assessee.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 6th April, 2023.

sd/-
(G. S. PANNU)
PRESIDENT

sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Dated: 06/04/2023

Veena

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
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Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
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Date on which the file goes to the Head Clerk	
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