

**IN THE INCOME TAX APPELLATE TRIBUNAL “RANCHI” BENCH: RANCHI
VIRTUAL HEARING AT KOLKATA**
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 112/RAN/2016
Assessment Year : 2010-11

Mongia Steel Limited (Formerly Mongia Hi-Tech Pvt. Ltd.) (PAN: AABCM 4621 M)	Vs.	ACIT, Central Circle-Dhanbad
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

I.T.A. No. 101/RAN/2016
Assessment Year : 2010-11

DCIT, Central Circle-Dhanbad	Vs.	Mongia Steel Limited (Formerly Mongia Hi-Tech Pvt. Ltd.) (PAN: AABCM 4621 M)
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	23.05.2023
Date of Pronouncement / आदेश उद्घोषणा की तिथि	11.08.2023
For the Appellant / निर्धारिती की ओर से	Shri Devesh Poddar, Advocate
For the Respondent / राजस्व की ओर से	Shri Rinku Singh, CITDR

ORDER/ आदेश**Per Rajesh Kumar, AM:**

These cross appeals by the assessee and by the revenue are directed against the order of the Ld. Commissioner of Income Tax, (Appeal)-3, Patna[hereinafter referred to as 'Ld.CIT(A)'] dated 22.01.2016 for the assessment year 2010-11.

ITA No.101/Ranchi/2016

2. Issue raised in ground no. 1 is against the order of Ld. CIT(A) partly deleting the addition on account of undisclosed profit from Rs. 3,06,21,092/- to 3,50,029/-.

3. Facts in brief are that the AO during the course of assessment proceedings made an addition of Rs. 3,06,21,092/- towards profit on basis of seized documents . Pertinent to state that a search and seizure operation u/s 132(1) of the act carried out in the business as well as in the residential premise of Mongia Group of cases on 16.09.2009 and on subsequent several dates. A survey us/ 133A of the Act was also conducted in alternative factory premises of the group concerns simultaneously. The present assessee is the flagship concern of the Group. The AO on the basis of seized documents prepared /redrawn a trading account of Mongia group for AY 2010-11 and computed the profit of Rs. 3,06,21,092/- and treated the same as undisclosed profit from trading which were not disclosed by the assessee in the books of account in the assessment framed 144 of the Act dated 29.12.2011.

4. In the appellate proceedings the Ld. CIT(A) after taking into consideration the contentions and submissions of the assessee and also various evidences filed during the appellate proceedings and after calling a remand report copy whereof is attached at page no. 2 to 13 partly allowed the appeal of the assessee by sustaining the addition to the tune of Rs. 3,50,029/- as against the addition made Rs. 3,06,21,092/- in the assessment order by the AO. The Ld. CIT(A) while partly allowing the appeal of the assessee considered the redrawn trading account on the basis of seized documents on the basis of the AO came to the conclusion that the undisclosed profit were Rs.

67,76,229/- and not as calculated earlier and added to the income of the assessee in the assessment framed u/s 144 of the Act of Rs. 3,06,21,092/-. However the Ld. CIT(A) deleted the addition out of those amounts to the tune of Rs. 64,26,200/- being alleged sale to Nanak Hi-tech Pvt. Ltd. which are disclosed at page 13 to 14 of the appellate order. The Ld. CIT(A) deleted the addition by accepting the assessee's contention that no actual sales took place as alleged and goods were sent against challans were returned back. The assessee submitted before the Ld. CIT(A) that these transactions were to the sister manufacturing unit which is located at a distance of 5 km. It was also submitted that since the manufacturing unit of Nanak Hi-tech Pvt. Ltd. was not satisfied with the quality of the goods supplied, the same were returned back against return memo which were filed before the Ld. CIT(A) and are attached page 15 to 38 of PB.

5. The Ld. D.R submitted before the bench that the addition was calculated by the AO at Rs. 67,76,229/- by redrawn trading account in the remand proceedings . Therefore the Ld. CIT(A) has wrongly deleted the addition to the tune of Rs. 64,26,200/- and sustained only Rs. 3,50,029/-. The Ld. D.R submitted that the theory of non-making of sales to the Nanak Hi-tech pvt. Ltd. and sending the goods against challans only were after thought which was a story coined to circumvent the revenue .Therefore the Ld. CIT(A) has wrongly accepted this contention and prayed that the order of Ld. CIT(A) may kindly be reversed by restoring the order of AO.

6. The Ld. A.R on the other hand submitted that the Ld. CIT(A) has rightly accepted the contention of the assessee after examining the bills, vouchers , transfer memos, return memos and other documents that in fact no sales had taken place and goods were sent through challans. The A.R referred to the return memos copies of which are filed at page 15 to 38 of PB. The Ld. A.R submitted that since the assessee has not issued any bills, vouchers and thus sales were not recorded in the books of account. This movement of stocks actually represented the same in the hands of the assessee. The Ld. A.R therefore submitted that these are not unaccounted of sale as the assessee has concluded by the AO on the basis of seized documents. The Ld. A.R has

made an alternative submission made before the Bench that it is the case of the revenue that Rs. 64,26,200/- was the undisclosed sales of the assessee which represents corresponding purchases in the hands of M/s Nanak Hi-tech Pvt. Ltd. but as the facts on record suggest that there was no addition of undisclosed purchases made in the hands of M/s Nanak Hi-tech Pvt. Ltd. by the AO. The assessment which was also done in a parallel mode by the same AO. The Ld. A.R submitted that the once the purchases stand accepted, the sales cannot be said to be undisclosed and therefore the Ld. CIT(A) was justified in deleting the addition to the tune of Rs. 64,26,200/-. The Ld. A.R also submitted that the addition of Rs. 3,50,029/- was sustained by the Ld. CIT(A) on the basis of redrawn trading account from seized materials. The Ld. A.R submitted that as per the table at page 12 of appellate order with respect to sales and purchases entries recorded in MHPL 23, the peak of the said document stands at Rs. 85,587/- the calculation whereof is filed at page 39 to 41 of PB and disclosed the same in the hands of Shri G. S. Saluja cognizance of which was duly taken by the department in the rectification order passed in the case of G. S . Saluja dated 30.10.2015 copy of which alongwith calculation sheet is attached at page 43 to 46 of PB. The Ld. A.R further submitted with respect to B 3 page 4 & 6 that the amount of Rs. 10,59,500/- in the remand report at page 3 the AO himself accepted it to be undisclosed sales, against which no expenses has been accounted in the trading account drawn and therefore the Ld. A.R submitted that at best GP of 16.62% which is the book profit and adopted by the AO in the subsequent dates be estimated on alleged undisclosed sales of Rs. 10,59,500/- and as such, an addition if any, should only be restricted to Rs. 1,76,088/-.

7. We have heard rival submissions and perused the material on record, we find that the Ld. CIT(A) has admitted the additional evidences during the appellate proceedings and referred the evidences to the AO for remand report and in the remand report itself the AO has redrawn trading account on the basis of seized documents and came to the conclusion that the undisclosed profit would be of Rs. 67,76,229/- instead of Rs. 3,06,21,092/- calculated and added in the assessment order. We also note that the Ld. CIT(A) accepted the plea of the assessee that M/s Nanak Hi-tech Pvt. Ltd. as

referred page no. 13 and 14 of the appellate order where in fact the goods were sent against challans and did not represent the actual sales which in fact did not happen and this transactions took place between the manufacturing units of the assessee group located within a distance of 5 Km. . The Ld. CIT(A) has accepted the plea of the assessee that M/s Nanak Hi-tech Pvt. Ltd. was not satisfied with the quality, the same were returned back against return memos copies of which is filed at page 15-38. Since no bills were raised and therefore sales were not recorded in the books of account. After perusing the evidences before us in the remand report and the finding of the Ld. CIT(A) we observe that the Ld. CIT(A) has correctly deleted the addition to the tune of Rs. 64,26,200/- and therefore the alternative plea taken by the assessee before us is not dealt with. As regards the party sustaining the addition of Rs. 3,50,029/- we find no merit in the assessee's contentions which a ground taken by the assessee in its cross appeal. Accordingly ground no. 1 raised by the revenue as well as ground no. 1 in assessee's appeal are dismissed.

8. Issue raised in ground no. 2 is against the order of Ld. CIT(A) partly reducing the addition of Rs. 1,43,29,594/- to 12,33,750/- on account of undisclosed stocks and issue raised in ground no. 3 is against the order of Ld. CIT(A) in partly reducing the addition of Rs. 1,06,48,951/- to Rs. 18,78,083/- on account of undisclosed profit on shortage of stocks found.

9. Facts in brief are that the AO passed ex-parte order making an addition of Rs. 1,43,29,594/- in respect of undisclosed stocks on the basis of valuation done by third person i.e. BCCL Officer . According to the AO the assessee failed to reconcile the discrepancies in the stocks as found during the course of search and even in the show cause notice issued to the assessee qua the valuation of excess stocks as were found physically on the date of survey in the premises of the assessee over and above the total value of stocks as recorded in the books of accounts which comes of Rs. 1,43,29,594/- as per MHPL 62. Therefore the AO added the same to the income of the assessee. Similarly the AO found that since the assessee has failed to reconcile the discrepancies in stocks as well as finish goods and on some occasions the assessee is

selling its goods as corroborated from impounded documents/stock register/sale register, the total excess of stocks recorded in the seized documents MHPL 62 on the date of survey over what has been found to be recorded physically comes to Rs. 6,40,73,108/- which is considered undisclosed sales of the assessee and by applying profit 16.62%, the AO worked out the undisclosed profit at Rs. 1,06,48,951/- and added the same to the income of the assessee.

10. During the appellate proceedings, the Ld. CIT(A) after taking into account the reconciliation of stocks filed by the assessee on which the remand report was also called by the Ld. CIT(A) and after considering the submissions of the assessee and remand report of the AO came to the conclusion that addition of excess stock is only Rs. 12,33,750/- as against Rs. 1,43,29,594/- added by the AO. Similarly in respect of suppression of sale/shortage of stock the AO made an addition of Rs. 1,06,28,951/- towards the suppressed sales of Rs. 6,40,73,108/- by applying GP rate 16.62%. The Ld. CIT(A) after examination of remand report has given a detailed findings at page 27-33 of appellate order and came to the conclusion that suppressed sales which the assessee failed to reconcile were Rs. 1,13,00,139/- and accordingly applied GP rate 16.62% and calculated the addition at Rs. 18,87,083/- and accordingly the addition to the extent was sustained and rest were deleted.

11. After perusing the materials as placed before us including the remand report and other evidences, we find that the Ld. CIT(A) has rightly reached conclusion that un-reconcile sales come to Rs. 1,13,00,139/- and after applying GP rate @ 16.62% the undisclosed profit of Rs. 18,78,083/- was sustained. Similarly in respect of undisclosed stock the Ld. CIT(A), after taking into account the contentions of the assessee and remand report, recorded a finding that the excess stock which could not be reconciled come to Rs. 12,33,750/- as against Rs. 1,43,29,594/- added by the AO in the ex-parte proceedings. The Ld. CIT(A) has given a detailed findings as to how the assessee explained this discrepancies in the remand before the AO as well as appellate proceedings. Accordingly we uphold the order of Ld. CIT(A) on this issue however considering unaccounted profits to the tune of Rs. 18,78,083/-, we are of the view that

the excess stock found to the tune of Rs. 18,78,083/- has to be telescoped against the undisclosed profit. After allowing the benefit of telescoping a net addition to the tune of Rs. 6,44,333/- is sustained. The order of Ld. CIT(A) is modified and AO is directed to add only Rs. 6,44,333/-.

12. Issue raised in ground no. 4 is against the deletion of addition of Rs. 2,37,450/- by Ld. CIT(A) in spite of fact that no specific disclosure about the said cash of Rs. 2,37,450/- was made by Mr G. S. Saluja.

13. In the assessment proceedings, the AO observed that cash found of Rs. 2,37,450/- belonged to the assessee and is accordingly addition was made in the assessment as made ex-parte by the AO as unexplained cash found.

14. In the appellate proceedings, the Ld. CIT(A) deleted the addition on the basis of statement of director of Shri G. S. Saluja.

15. After hearing the rival contentions and perusing the material on record, we note that the Ld. CIT(A) has rightly deleted the addition on account of cash on the ground that it has been considered in the hands of G.S. Saluja, director of assessee company. We note that cash disclosed in the hands of G. S. Saluja was made to the tune of Rs. 1,35,00,000/- has been taken into account copy of which is filed at 43 to 45 of PB which is apparent from appeal effect order passed u/s 153A/144/251 of the Act dated 30.10.2015. Thus the amount of Rs. 2,37,450/- stands covered Rs. 1,35,00,000/-. The assessee alternatively contended that cash found during survey on account of suppression of sale/undisclosed sales and as such telescoping may be allowed. Since we have allowed the main contention of the assessee and alternative contention of the assessee is not being dealt with. The ground no. 4 is dismissed.

16. Issue raised in ground no.5 is against the deletion of addition of Rs. 8,35,95,683/- computed after considering the total disclosure of Rs. 20,00,00,000/- made by G. S. Saluja which was never retracted in the assessment proceedings.

17. Facts in brief are that AO Shri G.S.Saluja in his statement recorded during search had disclosed Rs. 20,00,00,000/- as undisclosed income for the entire group however the total income disclosed by the assesseees in the group was only Rs. 3,28,08,633/- comprising Rs. 1,43,58,633/- Smt Trilochan Kaur and Shri H S Saluja Rs. 1,84,50,000/- and as such out of the balance amount of Rs. 16,71,91,367/- (Rs. 20,00,00,000/- - Rs. 3,28,08,633/-) , the AO made addition @50% of Rs. 16,71,91,367/- being Rs. 8,35,95,863/- in the hands of Shri G. S. Saluja. The Ld. CIT(A) after considering the contentions of the assessee recorded a finding the total disclosure was Rs. 10,05,05,260/- the details whereof are filed at page 42. It was also stated that Rs. 6,76,96,624/- was alone disclosed in the hand of Shri G. S. Saluja.

18. The Ld. CIT(A) accepted the contention of the assessee that statement during survey was made under pressure and without analyzing the seized documents during the survey. The Ld. CIT(A) analyzed the documents and came to the conclusion that assessee group has made the disclosure of Rs . 10,05,05,260/-. The Ld. CIT(A) accordingly considered the facts and various judicial precedents and deleted the addition of Rs. 8,35,95,683/- by observing and holding as under:

“During the course of appellate proceedings, the appellant contended that the appellant worked out the additional income shown in the disclosure statement on the basis of proper analysis of notings on the seized documents as well as various other deposits in the bank accounts and finally the total disclosure in respect of the group was as under (for A.Yrs. 2004-05 to 2010-11):

1.	<i>Sh Gunwant Singh Saluja</i>	<i>Rs. 6,76,96,624/-</i>
2.	<i>Smt Trilochan Kaur</i>	<i>Rs. 14,35,835/-</i>
3.	<i>Sh. Harinder Singh Saluja</i>	<i>Rs. 1,84,50,000/-</i>
	<i>Total</i>	<i>Rs. 10,05,05,259/-</i>

It was also contended that the search and seizure action continued for 6 days and the disclosure of Rs. 21 crore made at the time of statement during the search was not based on the proper analysis of seized documents. It was stated by the appellant that it had valid ground based on the proper analysis of seized documents to revise its disclosure. In support of its claim, the appellant has further submitted as under:

“As per CBDT circular No. 286/2/2003 dtd. 10.03.2003 it is mention and advises that there should be focus and concentration on collection of evidences of income which leads to information on what has not been disclosed or is not likely to be disclosed

before the IT department. It has been decided in the case of Pullangode Rubber produce co. Ltd. Vs State of Kerla 1973 91 ITR 18(SC) by Hon'b/e Supreme Court held that an admission is an 'extremely important piece of evidence but it cannot be said that it is conclusive. It is open to the assessee who made the addition to show that it is incorrect. In the case of Nagubai Armal Vs. B Sharma' Rao AIR 1956 SC ,100 by the Hon'ble Supreme Court held it has also laid down that an admission is not conclusive as to the truth of the matters stated therein. It is only a piece of evidence, the weight to be attached to which must depends on the circumstances under which it is made. Several courts have been decided that the disclosure u/s 132(4) during the course of search under pressure and coercion does not have any binding on the assessee. "

Vide this office letter dated 24.08.2015, another remand report on this specific issues was called for from the AO:

"In the assessment orders of the appellant starting from AY 2004-05 to 2009-10, the issues of addition are based on seized documents and other material evidences whereas in the order of AY 2010-11, addition of Rs. 8,35,95,683/- has been made without any reference to any seized documents or any other material evidences gathered by the AO. The appellant has challenged this addition raising the issue of exorbitant baseless addition by the AO. Similar additions were made by the AO in the AY 2010-11 in the case of M/s Mongia Hi-Tech Pvt Ltd.

You are hereby directed to verify the records of Sh. Gunwant Singh Saluja & M/s Mongia Hi-Tech Pvt Ltd. and state whether this addition of Rs. 8,35,95,683/- pertains to any material evidence available on the records. In the earlier remand reports called for by this office, the AO has kept mum on this issue. The amount of addition being substantial and liable to be deleted for lack of any material evidences and findings by the AO in the assessment order, you are once again directed to verify the record and comment specifically on this issue".

In reply the AO has reported vide later dated 26.08.2015 duly forwarded by the Range head stating as under:

"The assessee disclosed Rs. 20.0 Crores as undisclosed income of his group. The total disclosure of undisclosed income as shown by other assesses of the group is as under:

<i>1. Trilochan Kaur</i>	<i>Rs. 1,43,58,633/-</i>
<i>2. Harinder Singh Saluja</i>	<i>Rs. 1.84.50.000/-</i>
	<i>Rs. 3,28,08,633/-</i>

The assessee neither submitted any retraction nor raised the issue of this particular addition of Rs. 8,35,95,683/- during the course of assessment. So, changing the stand at this stage should not be entertained and is fit to be rejected.

After considering the remand report of the AO on this issue, as well as assessment orders and appellate matters dealt by the undersigned for A.Yrs. 2004-05 to 2010-11, I find that the director of appellant company Shri G.S. Saluja has properly worked out total undisclosed income of Rs. 6,76,98,624/- for all these A.Yrs. based on seized documents. Even the AO has also made additions in these assessment years 2004-05 to 2010-11 based his appreciation and analysis of seized documents in the case of Sh. G.S. Saluja as well as appellant. So, there is no case now for addition of any amount unsupported by any seized documents and merely on the basis of statement of the appellant during search & seizure action. The appellant had filed comprehensive explanation of seized documents and additional income offered for taxation in

Sh. G.S. Saluja and other individuals. The additions in the case of the appellant has also been considered on the basis of seized documents and evidences found in search. Hence, the residual addition of Rs. 8,35,95,683/- is hereby deleted.”

19. After hearing the rival contentions and perusing the material on record, we find that the Ld. CIT(A) after taking into account the remand report recorded a finding that undisclosed income of Rs. 6,76,96,624/- was shown in the hands of G. S. Saluja in various assessment years. We also note that the total disclosure was Rs. 10,05,05,259/- which was based on the appreciation of documents seized analyzed by the Ld. CIT(A) and after taking into account the remand report, the total disclosure comprised of Sh. Gunwant Singh Saluja Rs. 6,76,96,624/-, Smt. Trilochan Kaur Rs. 143,58,633/- and Sh. Harinder Singh Saluja Rs. 1,84,50,000/- Therefore we do not find any infirmity in the order of Ld. CIT(A) deleting the addition of Rs. 8,35,95,683/- .We also note that identical addition was made in the hands of G. S. Saluja which was deleted by Id CIT(A). Thereafter the revenue has not challenged the order of first appellate authority before the Tribunal and it attained finality. We note that the appeal effect order passed in case of Shri G. S. Saluja a copy of which is at page 44 which clearly shows the relief of Rs. 8,35,95,683/- was allowed by Ld. CIT(A) and further that no appeal pending before the Tribunal filed by the revenue. On this score also we note that the issue being identical has rightly been deleted by the Ld. CIT(A). Accordingly ground no. 5 is dismissed.

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20. The assessee has challenged the addition of Rs. 3,50,029/- on account of undisclosed profit from redrawn trading account, Rs. 12,33,750/- on account of undisclosed stocks and Rs. 18,78,083/- from undisclosed profits on suppressed sales.

21. We have already decided this issue while deciding the ground no. 1 in the revenue appeal wherein we have confirmed the said addition in ITA No. 101/Ran/2019. We already given a finding that the assessee's total undisclosed profit from suppressed sale worked out to Rs. 18,78,083/- and undisclosed stock of Rs. 12,33,750/- which was directed to be telescoped against each other . Thus net

addition of Rs. 6,44,333/- was sustained. Therefore we do not find any merit in the appeal of the assessee. Accordingly the same is partly allowed as the telescoping of undisclosed stock of Rs. 12,33,750 was allowed out of undisclosed profit of Rs. 18,78,083/- and balanceing amount after giving effect to telescoping Rs. 6,44,333/- on account of undisclosed profit from suppression of sale is sustained. Accordingly the grounds raised by the assessee is partly allowed.

22. In the result, the appeal of the assessee are partly allowed and the appeal of the revenue is dismissed.

Order is pronounced in the open court on 11th August, 2023

Sd/-

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

Sd/-

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

Dated: 11th August, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant-Mongia Steel Ltd. (Formerly Mongia Hi-Tech Pvt. Ltd.) Burhiadih, Tundi Road-Giridih, Jharkhand-815301
2. Respondent – ACIT, CC-Dhanbad

DCIT, CC-Dhanbad

3. Ld. CIT(A)-3, Patna
4. PCIT- , Ranchi
5. DR, Ranchi Bench, Ranchi

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By Order

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