

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'C', KOLKATA**

[Before Dr. Manish Borad, Accountant Member &  
Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 2306/Kol/2018**  
**Assessment Year : 2014-15**

ITO, Ward-35(2), Kolkata	Vs.	M/s. India Steel Corporation
		PAN: AAIFI 8045 B
Appellant		Respondent

**I.T.A. No. 2430/Kol/2018**  
**Assessment Year: 2014-15**

M/s. India Steel Corporation	Vs.	ITO, Ward-35(2), Kolkata
PAN: AAIFI 8045 B		
Appellant		Respondent

Date of Hearing	27.09.2023
Date of Pronouncement	27.09.2023
For the Assessee	Shri Sushil Kumar Pransukhka, FAC
For the Revenue	Shri B.K. Singh, JCIT, Sr. DR

**ORDER**

**Per Sonjoy Sarma, JM:**

These captioned appeals are filed by the revenue and assessee respectively against the order of ld. CIT(A)-10, Kolkata order dated 24.08.2018 relevant to A.Y. 2014-15. The revenue has raised the following grounds of appeal:

- "i. On the facts and circumstances of the case, the ld. CIT(A) erred in allowing relief to the assessee by deleting the addition of Rs. 9,38,833/- made after disallowing commission expenses.*
- ii. On the facts and circumstances of the case, the ld. CIT(A) erred in restricting the addition against point no. (b) to only Rs. 33,50,092/- which was calculated at 15% of total addition of Rs. 2,23,33,949/-.*
- iii. On the facts and circumstances of the case, the ld. CIT(A) erred in deleting the addition of sundry creditors of Rs. 14,53,200/-."*

2. The assessee has raised the following grounds of appeal:

*i. That ld. Commissioner of Income Tax (Appeals)-10, [CIT(A)] has erred in law and on the facts in not allowing fully the addition of Rs. 2,23,33,949/- as alleged bogus purchase made by AO.*

*ii. That the ld. CIT(A) has likewise further erred in confirming the said addition to the extent of Rs. 33,50,092/- being 15% of Rs. 2,23,33,949/-.*

*iii. That ld. CIT(A) has likewise further erred in not allowing full relief of Rs. 14,53,200/- as alleged unproved purchase by confirming Rs. 2,17,980/- being 15% of said sum of Rs. 14,53,200/-.*

*iv. That appellant craves leave to add, to amend or withdraw to any ground on or before the hearing of the appeal.”*

3. Brief facts of the case are that the assessee filed its return of income of Rs. 4,36,110/-. The return of income filed by the assessee was assessed by the AO at Rs. 2,51,62,090/-. During the assessment proceeding, the ld. AO notices that the assessee obtained different orders from different State Electricity Board which assessee has engaged agents and orders were processed through commission agents. The assessee has paid amount of Rs. 9,38,833/- to the agent. The ld. AO found that such expenses were not genuine and added to the income of the assessee. The ld. AO also noticed that assessee firm has purchased goods worth Rs. 2,23,33,949/- from a supplier and all payment proceeds have been made through banking channels and the goods so purchases was subsequently sold earning profit. The ld. AO during assessment has not disputed sales but held the purchase as bogus. Furthermore, the ld. AO found that sundry creditors closing balance amounting to Rs. 14,53,200/- for purchase from B.N. Traders was held to be bogus as notice u/s 133(6) could not be served through assessee on information of AO submitted details from said supplier.

4. Assailing the order of ld. AO, assessee went into appeal before ld. CIT(A) where the appeal of the assessee was partly allowed.

5. Dissatisfied with the above order, the revenue preferred an appeal before the Tribunal raising various grounds before us. Similarly, the assessee also preferred appeal against the order of ld. CIT(A) before the Tribunal raising various grounds before us. While going through the appeal of the assessee, we notice that the instant appeal filed by the assessee is barred by limitation of 11 days. In this regard, the assessee has filed an application stating the reasons for delay in filing the appeal before the Tribunal.

6. We after going through the same and satisfied the reasons behind such delay and condone the delay in filing the appeal by the assessee.

7. First we take up the appeal in ITA No. 2306/Kol/2018 for adjudication. Ground no. 1 taken by the revenue by stating that the ld. CIT(A) erred in allowing the relief of assessee by deleting the addition of Rs. 9,38,833/- which was made by the AO during framing of assessment regarding disallowance of commission expenses. In this context, ld. DR submitted that ld. CIT(A) has committed an error without considering the findings given by the ld. AO by simply relying on the decision rendered by Tribunals and High Courts which are not in connection with the matter involved. Therefore, the findings given by the ld. CIT(A) need to be set aside.

8. On the other hand, ld. DR supports the findings given by ld. CIT(A). He contended that while framing the assessment, ld. AO has not made any attempt to verify the authenticity of the alleged transaction of payment of commission by summoning the commission agent u/s 131 of the Act. Besides that assessee while making the payment to the commission agent was deducted tax from the agent as per the provisions of I.T. Act. In such a situation, the ld. AO cannot disallow such payments made to the agents.

9. We after hearing the rival submission of the parties and perusal of the material available on record. The specific issue involved in the instant appeal raised by the revenue is that ld. CIT(A) erred in law by allowing relief to the assessee by deleting the addition of Rs. 9,38,838/- whereby ld. CIT(A) has set aside the addition made by the ld. AO by making following observation:

*"1. I have carefully considered the action of the Ld. A.O in making the impugned addition of Rs.9,38,833/- by disallowing in entirety the claim of commission payments as made by the assessee. I find that the main reason as to why the Ld. A.O. has is believed the alleged payments as claimed to have been made to the commission agent is that the appellant was unable to produce the said agent before the Ld. A.O. It was the claim of the appellant before the Ld. A.O. during the assessment proceedings that the alleged agent had procured orders from M/s Devi Ispat and M/s Manoj Kumar Anil Kumar Eng (P) Ltd for the year on behalf of the assessee. However, the Ld. A.O has recorded that she had sought for and obtained information from the two Purchase Parties about the involvement of any agents on behalf of the appellant, and that they had denied any such involvement. The Ld. A.O. has also made an observation that on examination of details of Sundry debtors filed by the assessee firm, it was noticed that large transactions had been made with M/s. Manoj Kumar Anil Kumar Eng (P) Ltd in the preceding financial year i.e. 2012-13, and that in that preceding year, the alleged agent Shri Anil Maji had not rendered any service to the assessee firm. The Ld. A.O also reckoned that the sales*

to the same party in the subject assessment year would therefore logically not require the services of an agent. When the appellant was show-caused by the Ld. A.O. about the denial of any agents in the purchases made by the Party, it was replied by the assessee that the denial may be on account of certain disputes between the agent and the Purchaser, and that as far as the firm was concerned the sales had been affected through the agent, and he had been paid for the services rendered towards the appellant-firm in procuring the business.

2. In appeal, on the other hand, the appellant / Ld. A.R for the appellant-firm has paced forth the following arguments:

a. The Ld. A.O's observations about commission was related to sales made to two parties, namely (i) M/s. Devi Ispat Pvt. Ltd. and (ii) M/s. Manoj Kumar Anil Kumar Engg. Pvt. Ltd. In case of (ii) party on verification by Ld. A.O. said party vide their letter filed with Ld. A.O. on 14-09-2016 has categorically stated that transaction with them were made through Sri Anil Majhi. Simply because for transactions made in earlier year with said party no such commission was paid, services rendered this year and confirmed by the firm's buyer cannot be held as bogus and not proved. This apart, of total payment to Sri Majhi Rs.938,833/- a sum of Rs.93,384/- was also deducted at source and deposited With Govt. Copy of said party's confirmation referred above is enclosed (Page No. 24). For services rendered by Sri Majhi in case of Manoj Kumar Anil Kumar Engineering Pvt. Ltd. was Rs.644,287/-.

b. As to appearance of Sri Anil Majhi, A.O. said that She asked to produce him for verification. Though the Firm's A.R. does not remember as to such requirement of Ld. A.O., but in any case A.O. himself could have issued summons u/s. 131 or letter u/s. 133(6) as he did in case of above named two customers of the Firm.

c. It is, therefore, humbly submitted that for the facts and under the circumstance at least Rs.938,833/- paid to Sri Majhi as commission on sales to end Customer should not be sustained.

d. As to sales made to M/s. Devi Ispat Pvt. Ltd., they confirmed the transaction but have stated that there was no middleman. In paragraph 1.4 A.O. has quoted the Firm's reply in this regard. It is again asserted that trading in iron material was very first attempt by the Firmn. As Sri Majhi was known he was asked to let the Firm know prospective buyers. Sri Majhi gave us name of Devi Ispat Pvt. Ltd. as possible buyer. He met them or not the Firm has no knowledge but

when the firm approached they agreed to buy material. As Sri Majhi helped the Firm it was a moral duty to reward him by payment of commission on this deal and Rs.2,94,546/- paid to Mr. Majhi. This makes total commission to him Rs 9,38,833/-.

3. Having examined the matter carefully and having analyzed the submissions placed by the appellant-firm, I find that in one case there has been acceptance by one of the Purchase Parties about the involvement of the agent Shri Majhi, and in another case there has been denial of any agent. I also find that the Ld.AO has not made any attempt to verify the authenticity of the said transactions of payment of commission by summoning the commission agent u/s 131(1) of the Income Tax Act, 1961. On analysis it appears that there is a certain justification for paying the commission for purchases/sales so to achieve higher turnovers. In any case, I find that the Ld. AO has, on facts not found any of the payments to be false or made to related parties. It has been held in the case of CIT V. Shriram Pistons & Rings Ltd. (2012) 19 taxmann.com 205/206 Taxman 41 (Mag.) (Delhi) Where assessee paid commission to agents for work performed by them, agents were not bogus, and commission was paid by crossed cheque, same was allowable as deduction.". Similarly in the case of Addl. CIT V. Titan Engineers (2011) 8 ITR (Trib.) 748/15 taxmann.com (Bang.), the Hon'ble ITAT has observed that "where Commission payment was proved by evidence and assessee achieved a high amount of turnover justifying the payment of commission to procure business, commission was allowable as business expenditure." I also find that the AO has not mentioned anywhere that the payments of the impugned commission were to close relatives or to family members or related parties, or that they were excessive, factors that would weigh against such payments. As already discussed the label of certain payments beyond 0.1% have been termed excessive by the Ld. AO without any proper justification or comparable cases. I find that the Hon'ble Delhi High Court in the case of Printers House Pvt Ltd, reported in 188 Taxman 60, has held that where there is no evidence on record to show that the commission was paid to any near relative, family member or sister concern, there was no iota of evidence to show that the commission came back to the assessee in any form and the payment of commission represented only accommodation entry, there was no justification to disallow the same, particularly when the assessee gave full details including address of the buyers and the agents, details of payments etc. I also find that the judgment of the Hon'ble Jurisdictional High Court of Calcutta, in the case of C.I.T. Vs Alfa Hydronics Pvt Ltd, ITA No 549/2004 decided on 10th November,

*2014, wherein it has been held that when there was nothing to show that the transaction of the payments of commission was not genuine or the commission was excessive or unreasonable, no disallowance can be made. Overall, from the facts and circumstances emanating in the case, and the judicial\decisions applicable, especially that of the Hon'ble Kolkata High Court I find that the Ld AO was not justified in making the impugned disallowance of Rs.9,38, 833/ -, and therefore the same is therefore ordered to be deleted. The ground accordingly stands adjudicated as allowed in favour of the assessee-appellant.”*

10. We after going through the facts of the case noticed that while disallowing the claim of assessee, the ld. AO has not made any attention to verify the authenticity of the transaction by calling the commission agent, Shri Majhi by issuing summon u/s 131 of the Act. Similarly, we find that out of total payment made to the alleged commission agent. While making payment, the assessee has deducted a sum of Rs. 93,384/- from him as TDS. In such circumstances, the view taken by the ld. AO is not correct and in the present case while allowing the claim of the assessee ld. CIT(A) has elaborately discussed all the facts by allowing the claim of assessee. In such a situation, we do not find any infirmity in the order passed by the ld. CIT(A) accordingly we are inclined to dismiss the ground taken by the revenue.

11. In respect of issue no. 2 where revenue challenging the impugned order passed by ld. CIT(A) by which restricting the addition of only Rs. 33,50,092/- by calculating the addition @ 15% of the total addition of Rs. 2,23,33,949/- made by the AO and the view taken by the ld. CIT(A) in this regard is not correct. On this aspect, the ld. DR stated that the view taken by ld. CIT(A) is not proper since alleged creditors one of the directors has admitted while taking his statement recorded on oath u/s 131

stating that accommodation entries were made through bogus bills to the assessee during the survey operation conducted u/s 133A of the Act in the F.Y. 2013-14. In such a situation, it is not correct on the part of ld. CIT(A) to delete the addition made by the AO. Therefore, he prayed before the bench to sustain the ground taken by the revenue by setting aside the order of ld. CIT(A). On the other hand, ld. AR stated that view taken by the ld. CIT(A) is correct by allowing relief to the assessee.

12. We after hearing the rival submission of the parties and on perusal of the material available on record, we find that while passing the impugned order, ld. CIT(A) has taken a view that only element of profit embedded from such purchase to be considered for an addition by applying various important decisions rendered by the Hon'ble Superior Courts as well as Co-ordinate Bench of Tribunal on the subject matter of the issue involved whereby restricting the profit element of 15% of aggregate purchase from the alleged sum of Rs. 2,23,33,949/-. From the above facts, we do not find any infirmity in the impugned order passed by the ld. CIT(A). Accordingly, the ground taken by the revenue is hereby dismissed. Consequent to above findings in respect of issue involved in ground no. 1 & 2 taken by the assessee in its appeal are also hereby dismissed.

13. In ground no. 3 where revenue challenged the findings given by ld. CIT(A) direct the ld. AO to determine the element of profit in the transaction of Rs. 14,53,200/- by applying 15% on the impugned purchase made by the assessee. In respect of this issue, the ld. DR also reiterated the submission similar to make



in relation to ground no. 2 and prayed before the Bench to set aside the impugned order passed by the ld. CIT(A) sustaining the order of ld. AO. On the other hand, ld. AR opposed to the prayer made by the ld. DR in respect of instant issue.

14. We after hearing the rival submission of the parties and going through the facts of the case, we find that on this issue ld. CIT(A) partly allowed relief to assessee by taking similar view as he taken in issue no. 2 hereinabove by applying the element of profitability in transaction which had worked out at 15% of Rs. 14,53,200/- following the various important decisions rendered by the Hon'ble Supreme Court as well as the High Court. Therefore, we do not find any infirmity in the findings given by the ld. CIT(A) accordingly ground taken by revenue is hereby also dismissed. Since we confirmed the order of ld. CIT(A) by dismissing the appeal of the revenue. Consequent to that in ITA No. 2430/Kol/2018 filed by assessee has no leg to stand. Accordingly, the appeal filed by the assessee is also dismissed.

15. In the result, the appeal of the revenue as well as the appeal of the assessee is dismissed.

Order pronounced in the open court on 27.09.2023.

Sd/-

Sd/-

(Manish Borad)  
Accountant Member

(Sonjoy Sarma)  
Judicial Member

Dated: 27.09.2023

*Biswajit*

Copy of the order forwarded to:

1. ITO, Ward-35(2), Kolkata.
2. M/s. India Steel Corporation, 5/1, Clive Row, 2<sup>nd</sup> Floor, Room No. 38, Kolkata-700001.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata