

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F': NEW DELHI**

**BEFORE,
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.1024/Del/2017
(ASSESSMENT YEAR 2011-12)**

ITO Ward-19(4), Room No. 209, IInd floor, C. R. Building, I. P. Estate, New Delhi	Vs.	Pioneer Polymers Pvt. Ltd. 7/23, Kirti Nagar Industrial Area New Delhi PAN-AAACP5932B
(Appellant)		(Respondent)

Assessee by	Ms. Aditi Gupta, Adv
Department by	Sh. Vivek Vardhan, Sr. DR

Date of Hearing	10/10/2023
Date of Pronouncement	16/10/2023

ORDER

PER YOGESH KUMAR U.S., JM

The instant appeal filed by the Revenue is against the order of Learned Commissioner of Income Tax (Appeals)-7, New Delhi ["Ld. CIT(A)", for short], dated 14/12/2016 for the Assessment Year 2011-12.

2. The grounds of Appeal of the Revenue are as under:-

"On the facts and under the circumstance of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 34,60,000/- without appreciating the fact that the assessee has failed to submit any

documentary evidence of sale of scrap machinery or auction document as claimed at the time of assessment proceedings"

"That on the facts and under the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 3,49,08,598/- on account of alleged suppression of sales without appreciating the fact that the assessee consuming electricity to produce off the record cabinets and selling the same out of the book"

"The Appellant craves to be allowed to add any fresh ground of appeal or delete or amend any of the ground of appeal".

3. Brief facts of the case are that, the assessee filed return of income for Assessment Year 2011-12 at NIL which was processed u/s 143(1) of the Act. The case was selected for scrutiny, an assessment order u/s 143(3) of the Act was passed on 24/03/2014 assessing the income at Rs. 3,05,86,225/- by reducing the carry forward business loss and unabsorbed depreciation to Rs. 44,16,806/-, disallowed of Rs. 36,19,181/- u/s 36(1)(iii) of the Act, addition of Rs. 34,60,000/- made on account of purchases not included in the closing stock/sales, disallowance of Rs. 4,38,165/- out of expenses for non business purpose and Rs. 3,49,08,598/- on account of margin on sales out off books cabinet on an estimate basis.

4. Aggrieved by the assessment order 24/03/2014, the assessee preferred an Appeal before the CIT(A), the Ld. CIT(A) vide order dated 14/12/2016, deleted the addition of Rs. 34,60,000/- made on account of purchase not included in closing stock/sales, deleted the addition of Rs. 3,49,08,598/-

which was made on account of suppression of sales. Aggrieved by the order of the CIT(A) dated 14/12/2016, the Department of Revenue preferred the present Appeal on the grounds mentioned above.

5. Ground No. 1 is regarding deletion of addition of Rs. 34,60,000/- which was made by the A.O. on the ground that the assessee had inflated its purchase by showing sale of scrap machinery. The assessee in its annexure to balance sheet, shown to have sold plant and machinery of Rs. 34,60,000/- at Noida Unit. During the assessment proceedings, vide letter dated 09/09/2013, the assessee submitted party wise details of purchase, wherein shown that the assessee had purchased goods of Rs. 34,60,000/- from some suppliers shown as scrap machinery. The A.O. was of the opinion that the assessee had inflated purchase by showing scrap machinery of Rs. 34,60,000/- without corresponding sales or inventory and also observed that the assessee had not shown the same as the fixed asset. In view of the same, the said amount of Rs. 34,60,000/- has been added to the closing stock of the assessee being item included in purchases neither sold during the year nor included in the list of inventory. The Ld. CIT(A) vide order impugned deleted the said additions on the ground that the assessee Company has duly accounted for sale of scrap machinery during the year in its book.

6. The Ld. Departmental Representative challenging the above addition submitted that the Ld. CIT(A) committed error in deleting the addition without their being any documentary evidence of sale of scrap machinery or auction

documents as claimed at the time of assessment proceedings and relying on the assessment order and sought for reversal of the findings and conclusion of the CIT(A).

7. Per contra, the Ld. Assessee's Representative who has filed written submission in brief, relying on the findings and conclusion of the CIT(A), submitted that the scrap machinery of Rs. 34,60,000/- lying in Nodia Unit was transferred to Kirti Nagar, Unit during 07/05/2010 to 09/11/2010. Accordingly, in the books of the Noida Unit, the said machinery has been excluded from the schedule of assets and was included as purchases in Kirti Nagar Unit. Further submitted that, during the year itself, the scrap machinery has been sold to M/s Shri Mahalxmi Plywood Industries for Rs. 46,98,000/-, the sale proceeds are duly accounted for in the books of accounts and fixed deposits have been made out of the sale proceeds. But the A.O. on the basis of the entries in the ledger of scrap machinery account for the month of March 2011 wrongly interpreted the date '05/03/2011' as '03/05/2011'. The said error committed by the A.O. in making the addition has been rightly deleted by the CIT(A), therefore, submitted that the Ground No. 1 of the Revenue is deserves to be dismissed as meritless.

8. We have heard both the parties and perused the material available on record. The Ld. A.O. made addition of Rs. 34,60,000/- on the ground that the assessee had inflated its purchase by showing scrap machinery without

corresponding sales or inventory. The said addition has been deleted by the CIT(A) in following manners:-

“7.2. I have carefully considered the finding of the AO and written submissions filed by the Ld. AR. The AO added a sum of Rs.34,60,000/- to the closing stock of the appellant as items included in purchases but neither sold during the year nor included in the list of inventory (closing stock). The Ld. AR has submitted that scrap machinery of Rs.34,60,000/- lying in the Noida Unit of the appellant, was transferred to Kirti Nagar Unit during the period 07.05.2010 to 09.11.2010. Accordingly, in the books of the Noida Unit the said machinery has been excluded from the schedule of assets and was included as purchases in the Kirti Nagar Unit. During the year itself, the scrap machinery has been sold to one M/s Shri Mahalaxmi Plywood Industries for Rs.46,98,000/-, as is evident from the sale invoices furnished in the paper Book. The AO on the basis of the entries in the ledger of scrap machinery account for the month of March, 2011 which was in MM-DD-YYYY format interpreted the dates e.g. 05.03.2011 as 03.05.2011 and so on, held that the said sale has taken place in the next financial year. There is merit in the submission of the Ld. AR that in the details filed, the dates in the month of March, 2011 have been wrongly mentioned in MM-DD-YYYY format as against DD-MM-YYYY format. It is noted that the sale proceeds are duly accounted for in the books of accounts and fixed deposits have been made out of the sale proceeds. The basic premise of the AO, therefore, that the sales are made in the next financial year does not survive. Further, the observation of the AO that the P & L A/c does not show any trading sale, is really not material as not showing the sale against a particular head, is only a disclosure requirement and once the sales

have been recorded and accounted for in the books, there is no question of any closing stock of the impugned machinery that needs to be accounted for. In view of these facts, it is held that the appellant company has duly accounted for the sale of scrap machinery during the year in its books and therefore, the addition of Rs.34,60,000/- made by the AO to the closing stock, is directed to be deleted. This ground of appeal is ruled in favour of the appellant.”

9. It is found that the Ld. CIT(A) after verifying the material on record observed that scrap machinery lying Noida Unit of the assessee was transferred to Kirti Nagar Unit, during the period 07/05/2010 to 09/11/2010 and in the books of Noida Unit, the said machinery has been excluded from the schedule of assets and was included as purchases in the Kirti Nagar Unit. Further during the year itself the machinery has been sold to one M/s Sh. Mahalaxmi Plywood Industries to Rs. 46,98,000/- which has been corroborated with the sale invoices furnished in the paper books before the CIT(A). The Ld. CIT(A) has also found that the ledger of scrap machinery account for the month of March 2011 which in the format of MM-DD-YYYY, wrongly interpreted as '03/05/2011' instead of '05/03/2011'. Considering the fact that sale proceedings are duly accounted for in the books of account and fixed deposits have been made out of the sale proceeding, the finding of the A.O. that the sales are made in the next financial year has been rightly negated by the CIT(A). Thus, we find no error or infirmity in the order of the CIT(A) in deleting the addition, accordingly, we dismiss the Ground No. 1 of the Revenue.

10. Ground No. 2 of the Revenue is regarding deletion of addition of Rs. 3,49,08,599/- made on suppression of sales. The Ld. A.O. made the said addition being margin sales out of books on the basis of consumption of electricity and powder consumed during the year in the manufacturing process. The Ld. A.O. further observed that no raw material (Powder) was issued in the month of February and March 2011, whereas consumption of electrical unit is shown in the respective month and no production of cabinets was shown. During the Appellate Proceedings, the ld. CIT(A) deleted the addition in following manners:-

“9.2. I have carefully considered the finding of the AO, written submission filed by the Ld AR, Remand Report of the AO and the Rejoinder to the Remand Report. The AO added a sum of Rs.3,49.08.598/- being margin on sales out of books on the basis of consumption of electricity and powder consumed during the year in the manufacturing process. The appellant is in the business of manufacture of plastic mould through injection moulding machines and utilizes powder to make the mould as per the specifications of purchase orders. The appellant also does job work for vendors in which the raw material is supplied by the vendors for moulds. The AO has worked out the margins on the basis of variance in electricity unit consumed and powder consumption.

9.3. The AO has stated that no raw material (powder) was issued in the month of February and March, 2011 whereas consumption of electrical units is shown in the respective month whereas no production of cabinets is shown. I find that the appellant had produced 4083 units of cabinets for which no material could have

been issued as the raw material/powder was supplied by the customer for manufacture of cabinet on job work. There is bound to be consumption of power on account of which electricity unit would go up but there would be no own production of cabinets. This important aspect has not been considered by the AO.

9.4. The Ld. AR also furnished a detailed reconciliation statement wherein the difference in terms of units of electricity consumed as recorded by the AO, stands duly reconciled. It is explained that major reason for the variance is that in the preceding year there was large order of 14 inch TV cabinets whereas the production carried out during the relevant year was for 29 inch cabinets. Since 29 inch cabinets were manufactured on larger machines the electricity consumption is on the higher side. The appellant company has filed supporting documents viz. large orders for 14 inch cabinets for supply to Tamil Nadu Government (Elcot) which was manufactured and supplied in the last year. It is also noted that report of the Excise Audit for the year does not indicate any material discrepancy in the goods manufactured or any instance of sales outside the books.”

11. The Ld. Departmental Representative submitted that the CIT(A) committed error in deleting the addition on account suppression of sales without appreciating the fact that the assessee consumed electricity to produce off the record cabinets and selling the same out of the books.

12. Per contra, the Ld. Assessee's Representative by relying on the findings and conclusions of the CIT(A) submitted that there are many factors for determine the consumption of electricity for manufacturing, therefore, there cannot be one-to-one co-relation between electricity consumed vis-à-vis

production of cabinet. By taking us through the paper book and the documents produced in the Paper Book, the Ld. Assessee's Representative relied on the various judicial pronouncements in support of her contention and submitted that the additions have been rightly deleted by the CIT(A) which requires no interference at the hands of the Tribunal.

13. We have heard both the parties and perused the material available on record. The reason for making the addition by the A.O. that no material (powder) was issued in the month of February and March 2011 whereas consumption of electrical unit is shown in the respective month, but no production of cabinet is shown. As per the record, the assessee had production 4083 unit of cabinets for which no material could have been issued as the materials/powder was supplied by the customer for manufacture of cabinet on job work. The assessee had also furnished detailed reconciliation statement wherein the difference in terms of unit of electricity consumed as recorded by the A.O. was duly reconciled. The CIT(A) also found that the main reason for variance is that in the preceding year there was large order of 14 inch TV Cabinets, whereas the production carried out during the relevant year was of 29 inch cabinets. Since 29 inch cabinets were manufactured on larger machines, the electricity consumption is on the higher side. It is also noticed that the report of the Excise Audit for the year does not indicate any material discrepancy in the goods manufactured or any instance of sales outside the books. It is well settled law that the Assessing Officer solely on the basis of

variance in power/electricity, additions cannot be made on the allegation of unrecorded sales. Considering the above facts and circumstances we find no error or infirmity in the order of the CIT(A) in deleting the addition. Accordingly, we dismiss Ground No. 2 of the Revenue.

14. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in open Court on 16th October, 2023

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Dated: 16/10/2023

Pk/R.N, Sr. ps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI

