

आयकर अपीलीय अधिकरण, “एस.एम.सी” न्यायपीठ,कटक

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH CUTTACK

श्री जार्ज माथन, न्यायिक सदस्य के समक्ष ।

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER

आयकर अपील सं/ITA No.85&86/CTK/2023

(निर्धारण वर्ष / Assessment Year :2015-2016 & 2016-2017)

| | | |
|---|----|------------------------------|
| Bhramarbar Sahoo, Proprietor of M/s B.B.Steel, At:Bijaychandrapur, Atharbanki, Jagatsinghpur | Vs | ITO, TDS, Cuttack |
| PAN No. :AGAPS 4041 F | | |
| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |
| निर्धारिती की ओर से /Assessee by | : | Shri Sheshadeb Das, Advocate |
| राजस्व की ओर से /Revenue by | : | Shri Charan Dass, Sr. DR |
| सुनवाई की तारीख / Date of Hearing | : | 20/10/2023 |
| घोषणा की तारीख/Date of Pronouncement | : | 20/10/2023 |

आदेश / O R D E R

These are the appeals filed by the assessee against the order of the Id CIT(A), National Faceless Appeal Centre (NFAC), Delhi, both dated 27.10.2022 passed in DIN & Order No.ITBA/NFAC/S/250/2022-23/1046494355(1) & ITBA/NFAC/S/250/2022-23/1046494411(1) for the assessment years 2015-2016 & 2016-2017.

2. It was submitted by the Id. AR that the assessee purchases scrap and after processing the same the assessee sells the same as usable products. The Id. AR had filed written submissions as follows :-

1. That, the appellant has filed appeal before this Hon 'ble Tribunal wherein the appellant has challenged the legality of the order dtd.27.10.2022 passed by the Id. CIT(A).

2. That, the Id. CIT(A) while dismissing the appeal vide order dtd.27.10.2022 held that the assessing officer has not committed any error while assessing the appellant.

3. That, it is respectfully submitted .that the facts of the appellant is that the appellant is trader dealt with trading of scrap and finished goods and filed its return during the year under considerations.

4. That, the assessing authority while assessing the appellant held that the appellant is liable to pay penalty for not complying the provision of S- 206C(1A), (6A) & (7) of the IT Act.

5. That, both the forums failed to appreciate the facts 'that the appellant purchases the scrap from the various organizations situated at Paradeep and sale it after making it usable as finished product.

6. That, such facts were brought to the notice of the assessing authority while examining the books of account of the appellant during assessment. But, the Id. Assessing Officer has treated the sale of finished product as sale of scrap, as such the order of Id. AO is illegal and erroneous.

7. That, the Appellant for better appreciation of this Hon'ble Tribunal produces the month wise Sale Statement which were submitted before the Id. AO during the assessment.

(Copy of the sale statement is annexed herewith as Annexure-I)

8. That, from the sale statement of the appellant, it is crystal clear that after purchasing the scrap from the subsequent sellers, the appellant has made sale being usable goods. Such as Rod, angle, channel, plate etc. to third parties.

9. That, appellant being a seller of usable goods qua finished goods, it is not liable to deduct TCS and have not violated the provision of S-206 of the IT Act.

10. That, the Id. AO and the CIT(A) wrongly interpreted the sale statement as if the appellant purchased the scrap and sold it as scrap to the other parties. But the fact is that such scrap being not salable as scrap, the appellant converting the scrap to finished goods, conducts its business throughout the period under consideration.

In view of the facts and circumstances mentioned above, the appellant prays before this Tribunal to allow this appeal and quash the demand for which the appellant as in duty bound shall ever pray.

3. It was the submission that the item sold by the assessee are used as raw materials by the purchasers. It was the submission that though the assessee purchases scrap, what is sold by the assessee is after processing and, therefore, cannot be considered as scrap at all. It was the submission that the AO did not accept the contention of the assessee and



M/S B.B. STEEL
BIJAYACHANDRAPUR, ATHARBANKI, PARADEEP, JAGATSingHPUR, 754142
PROP : BHRAMARBAR SAHOO

PROVISIONAL TRADING AND PROFIT & LOSS ACCOUNT FOR THE YEAR ENDED ON 31/03/2015

| PARTICULARS | AMOUNT ₹ | PARTICULARS | AMOUNT ₹ |
|-----------------------------|------------------------|---------------------|------------------------|
| To Opening Stock | 2,91,71,141.00 | By Sales | 8,82,24,825.00 |
| To Purchase | 8,15,41,791.00 | | |
| To Carriage Inward | 6,02,517.00 | | |
| To Gross Profit c/d | 77,20,913.00 | By Closing Stock | 3,08,11,537.00 |
| | 11,90,36,362.00 | | 11,90,36,362.00 |
| To Salary & Wages | 21,15,027.00 | By Gross Profit b/d | 77,20,913.00 |
| To Repair & Maintenance | 1,06,953.00 | | |
| To Electricity Charges | 48,394.00 | | |
| To Travelling & Conveyance | 1,54,286.00 | | |
| To Printing & Stationary | 28,465.00 | | |
| To News Paper & Periodicals | 4,271.00 | | |
| To Telephone Charges | 23,857.00 | | |
| To Consumables | 2,87,456.00 | | |
| To Bussines Promotion | 34,289.00 | | |
| To Gas Cutting Expenses | 3,85,491.00 | | |
| To Legal Expenses | 31,529.00 | | |
| To Oil & Lubricants | 2,48,173.00 | | |
| To Medical Expenses | 28,495.00 | | |
| To Bank Charges | 27,543.00 | | |
| To Bank Interest | 16,88,611.00 | | |
| To Audit Fees | 12,000.00 | | |
| To Misc. Expenses | 67,372.00 | | |
| To Depreciation | 6,44,048.00 | | |
| To Net Profit | 17,84,653.00 | | |
| | 77,20,913.00 | | 77,20,913.00 |

DATE : 01/07/2015
PLACE : PARADEEP



FOR J T A & ASSOCIATES
CHARTERED ACCOUNTANTS

CA. TAPAS KUMAR SAHOO
PARTNER, M. NO 066975, FRN 327008E



M/S B.B. STEEL
BIJAYACHANDRAPUR, ATHARBANKI, PARADEEP, JAGATSingHPUR, 754142
PROP : BHRAMARBAR SAHOO

SCHEDULE - 1

PROVISIONAL FIXED ASSETS SCHEDULE FOR FY 2014-15

| SL. NO. | PARTICULARS | OPENING WDV | A D D I T I O N S | | DELETIONS DURING THE YEAR | GROSS TOTAL | RATE OF DEPRE | D E P R E C I A T I O N | | | CLOSING WDV |
|----------|---------------------------------|---------------------|--------------------|--------------------|---------------------------|---------------------|---------------|-------------------------|--------------------|--------------------|---------------------|
| | | | MORE THAN 180 DAYS | LESS THAN 180 DAYS | | | | HALF RATE | FULL RATE | TOTAL DEPRE | |
| 1 | PLANT & MACHINERIES | | | | | | | | | | |
| 1.1 | Trucks (2 Nos) | 8,074.00 | 0.00 | 0.00 | 0.00 | 8,074.00 | 30% | 0.00 | 2,422.00 | 2,422.00 | 5,652.00 |
| 1.2 | Trucks (2 Nos) | 1,35,577.00 | 0.00 | 0.00 | 0.00 | 1,35,577.00 | 30% | 0.00 | 40,673.00 | 40,673.00 | 94,904.00 |
| 1.3 | Truck | 86,031.00 | 0.00 | 0.00 | 0.00 | 86,031.00 | 30% | 0.00 | 25,809.00 | 25,809.00 | 60,222.00 |
| 1.4 | Mini Truck | 24,411.00 | 0.00 | 0.00 | 0.00 | 24,411.00 | 30% | 0.00 | 7,323.00 | 7,323.00 | 17,088.00 |
| 1.5 | New Truck | 1,11,518.00 | 0.00 | 0.00 | 0.00 | 1,11,518.00 | 30% | 0.00 | 33,455.00 | 33,455.00 | 78,063.00 |
| 1.6 | Truck | 2,42,657.00 | 0.00 | 0.00 | 0.00 | 2,42,657.00 | 30% | 0.00 | 72,797.00 | 72,797.00 | 1,69,860.00 |
| 1.7 | Truck | 2,42,657.00 | 0.00 | 0.00 | 0.00 | 2,42,657.00 | 30% | 0.00 | 72,797.00 | 72,797.00 | 1,69,860.00 |
| 1.8 | Hidra Crem | 2,49,417.00 | 0.00 | 0.00 | 0.00 | 2,49,417.00 | 30% | 0.00 | 74,825.00 | 74,825.00 | 1,74,592.00 |
| 1.9 | Safari | 3,68,733.00 | 0.00 | 0.00 | 0.00 | 3,68,733.00 | 15% | 0.00 | 55,310.00 | 55,310.00 | 3,13,423.00 |
| 1.10 | Godown Shed | 2,29,635.00 | 0.00 | 0.00 | 0.00 | 2,29,635.00 | 10% | 0.00 | 22,964.00 | 22,964.00 | 2,06,671.00 |
| 1.11 | Fortuner | 23,94,153.00 | 0.00 | 0.00 | 0.00 | 23,94,153.00 | 15% | 0.00 | 3,59,123.00 | 3,59,123.00 | 20,35,030.00 |
| 1.12 | Camper | 6,35,839.00 | 0.00 | 0.00 | 0.00 | 6,35,839.00 | 15% | 0.00 | 95,376.00 | 95,376.00 | 5,40,463.00 |
| 2 | FURNITURE & FITTINGS | 1,79,246.00 | 1,85,250.00 | 0.00 | 0.00 | 3,64,496.00 | 10% | 0.00 | 36,450.00 | 36,450.00 | 3,28,046.00 |
| | TOTAL | 49,07,948.00 | 1,85,250.00 | 0.00 | 0.00 | 50,93,198.00 | | 0.00 | 8,99,324.00 | 8,99,324.00 | 41,93,874.00 |
| | TOTAL FOR 44 AE | 8,50,925.00 | 0.00 | 0.00 | 0.00 | 8,50,925.00 | | 0.00 | 2,55,276.00 | 2,55,276.00 | 5,95,649.00 |
| | TOTAL FOR P & L | 40,57,023.00 | 1,85,250.00 | 0.00 | 0.00 | 42,42,273.00 | | 0.00 | 6,44,048.00 | 6,44,048.00 | 35,98,225.00 |

DATE : 01/07/2015
PLACE : PARADEEP



FOR J T A & ASSOCIATES
CHARTERED ACCOUNTANTS

CA. TAPAS KUMAR SAHOO
PARTNER, M. NO 066975, FRN 327008E

5. In reply, Id. Sr. DR vehemently supported the order of the Id.CIT(A).
6. I have considered the rival submissions. Admittedly, a perusal of the balance sheet and profit & loss account of the assessee clearly shows that the assessee is not doing any processing of scrap purchased. It is an admitted fact by the assessee itself that the assessee is purchasing scrap. Thus, as the assessee is not doing any processing insofar as there is no plant & machinery involved and there is no wages nor are there any tools, it cannot be said that the assessee is doing any processing work to convert the scrap into any usable products. In these circumstances, it has to be held that the assessee is selling scrap as it is. A perusal of the Schedule-1, it is found that the same mainly contains trucks, godown shed, and other vehicles. These are nothing but transportation equipments. This being so, I find no error in the order of the Id. AO and Id.CIT(A) which calls for any interference in both the appeals of the assessee.
7. In the result, both appeals of the assessee are dismissed.

Order dictated and pronounced in the open court on 20/10/2023.

Sd/-
(जार्ज माथन)
(GEORGE MATHAN)
न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 20/10/2023

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
Bhramarbar Sahoo,
Proprietor of M/s B.B.Steel,
At:Bijaychandrapur,
Atharbanki, Jagatsinghpur
2. प्रत्यर्थी / The Respondent-
ITO, TDS, Cuttack
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR,
ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)
आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack