

आयकर अपीलीय अधिकरण “बी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, CHENNAI

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI V. DURGA RAO, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.381/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2015-16)

DCIT Central Circle-(1) Coimbatore.	बनाम / Vs.	M/s. Sri Arumuga Cottspin Pvt.Ltd., No.95/13, Vyshnav Building, Opp. KG Cinemas, Race Course Road Coimbatore-641 018.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAJCS-5065-M		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

Cross Objection No.20/Chny/2023
(In ITA No.381/Chny/2023)
(निर्धारण वर्ष / Assessment Year: 2015-16)

M/s.Sri Arumuga Cottspin Pvt.Ltd., No.95/13, Vyshnav Building, Opp. KG Cinemas,Race Course Road, Coimbatore-641 018..	बनाम/ Vs.	DCIT Central Circle-(1) Coimbatore.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAJCS-5065-M		
(अपीलार्थी/ Cross Objector)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से/ Revenue by	:	Shri D. Hema Bhupal (JCIT)- Ld. DR
प्रत्यर्थी की ओर से/ Assessee by	:	Shri R. Venkata Raman (CA)-Ld. AR

सुनवाई की तारीख/ Date of Hearing	:	12-10-2023
घोषणा की तारीख / Date of Pronouncement	:	01-11-2023

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid appeal by Revenue for Assessment Year (AY) 2015-16 arises out of the order of learned Commissioner of Income Tax

(Appeals)-16, Chennai [CIT(A)] dated 17-01-2023 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 31-12-2017. The grounds taken by the Revenue read as under:

1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.

2 The Ld.CIT(A) erred in deleting the addition of Rs.49,44,000/- made towards disallowance of interest on borrowed capital u/s.36(1)(iii) proportionate to amount advanced to sister concerns.

2.1 The Ld.CIT(A) erred in concluding that there cannot be diversion of interest bearing loan funds as advances to sister concerns when there are no fresh interest bearing loans taken during the year, without appreciating that the assessing officer has disallowed the interest expenses claimed during the year which is proportionate to the interest on amount advanced to sister concerns.

2.2 The Ld.CIT(A) failed to appreciate that the assessee had not demonstrated that the loans advanced to sister concerns and the expenditure incurred by the assessee in the form of interest is wholly and exclusively for the purpose of business.

3. The Ld.CIT(A) erred in directing the assessing officer to telescope the addition made toward suppression of sales amounting to Rs.1,76,65,652/- against the addition of Rs.3,23,67,993/- made towards unexplained cash credits.

3.1 The Ld.CIT(A) failed to appreciate that the assessee has not substantiated the sources of cash credits were the amount generated by suppression of sales and there is no correlation drawn between the quantity, date and amount of sales suppressed.

3.2 The Ld.CIT(A) failed to appreciate that the assessee claimed during the assessment proceedings that the cash credits were made out of Cash sales. But on verification of the claim, only 5 parties out of 22 parties replied, categorically denying the cash transactions with the assessee. The assessee had not furnished confirmation from the remaining parties. Thus, the assessee failed to prove that cash credits were made out of cash sales.

3.3 The Ld.CIT(A) erred in allowing telescoping by observing that the sales suppression quantified by the assessing officer to the extent of Rs.1,76,65,652/- should have flown somewhere and sitting somewhere, without any evidence furnished by the assessee that the cash generated out of sales suppression was reintroduced in the form of cash credits.

4. For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored.

1.2 The assessee has filed cross-objection wherein the grounds raised by the assessee read as under: -

1. That the Ld.CIT(A) is justified in deleting the addition of Rs.49,44,000/- made towards disallowance of interest on borrowed capital u/s.36(1)(iii) of the Act proportionate to amount advanced to sister concerns.

2. That the Ld.CIT(A) is not justified in sustaining the addition of Rs.1,76,65,652/- made by the Assessing Officer towards alleged suppression of sales.

3. That the Ld.CIT(A) is not justified in confirming the addition of Rs.3,23,67,993/- made by the Assessing Officer u/s.68 of the Act by treating the cash receipts from the customers as unexplained cash credits.

4. Without prejudice to the above, that the Ld.CIT(A) is justified in directing the Assessing Officer to telescope the addition made towards suppression of sales amounting to Rs.1,76,65,652/- against the addition of Rs.3,23,67,993/- made towards unexplained cash credits.

1.3 The Registry has noted delay of 5 days in revenue's appeal. Similar delay of 21 days has been noted in assessee's cross-objections. Considering the period of delay, both delays are condoned and we proceed with adjudication on merits.

1.4 As is evident, three issues fall for our consideration i.e. (i) Interest disallowance u/s 36(1)(iii); (ii) Addition on account of alleged suppression of sales; (iii) Addition of unexplained cash credit u/s 68.

1.5 Having heard rival submissions and upon perusal of case records, our adjudication would be as under. The assessee being resident corporate assessee is stated to be engaged in manufacturing of cotton yarns.

2. Interest disallowance u/s 36(1)(iii)

2.1 This disallowance stem from the observation of Ld. AO that the assessee made interest-free advances for Rs.1323.82 Lacs to related parties. The assessee had received similar interest-free advances from related parties for Rs.1014.47 Lacs. Since the assessee obtained secured loans from banks and paid interest, Ld. AO alleged that interest bearing funds were diverted for non-business purposes to the sister concerns. Accordingly, Ld. AO, applying interest rate of 16% to net advance amount i.e. Rs.309.35 Lacs, computed impugned disallowance u/s 36(1)(iii) for Rs.49.44 Lacs.

2.2 During appellate proceedings, the assessee summarized the CC Bank account and Term Loan Bank accounts and demonstrated that closing balance in these accounts was much less than the opening balances which would show that there was, in fact, reduction in interest bearing secured loans during this year. The Ld. CIT(A) concurred that where there are no fresh interest-bearing loans taken during this year and therefore, there could be no diversion of interest bearing funds for non-business purposes as alleged by Ld. AO. Accordingly, the impugned disallowance was deleted. Aggrieved, the revenue is in further appeal before us.

2.3 From the tabulation made by Ld. CIT(A) in para-5.3 of the impugned order, it could be seen that there is overall reduction in the unsecured loans during this year since opening loans stood at Rs.20.18 Crores as against closing loans of Rs.17.41 Crores. Upon perusal of assessee's financial statements as placed on record, it could be seen that the assessee uses mixed funds to conduct its business. In such a case, the presumption would arise in assessee's favor that the interest-free funds were utilized to make interest-free investments / advances and the onus would be on Ld. AO to establish that interest bearing funds were utilized to make the advances. Unless this exercise is carried out by revenue, no such disallowance could have been made. Upon perusal of financial statements, we also find that the interest-free funds as available with the assessee are much more than the net interest free advances made by the assessee to its sister concerns. Therefore, the impugned disallowance has rightly been deleted by Ld. CIT(A). The

corresponding grounds raised by the revenue, in this regard, stand dismissed.

3. Addition on account of alleged suppression of sales.

3.1 Upon perusal of stock valuation as submitted by the assessee, Ld. AO observed that sales were made at Rs.150/- per Kg as against the fact that opening and closing stock was valued at Rs.195/- per Kg and Rs.214/- per Kg respectively. The same was tabulated as under: -

Type of inventory	Item	Value of yarn/kg
Opening stock	Finished goods	Rs.195
Sales	Finished goods	Rs.150
Closing stock	Finished goods	Rs.214

3.2 The Ld. AO held that the value of the finished goods was valued very less in sales. The assessee justified the same on the ground that some portion of the finished good contained Hank Yarn which is priced at a lower rate. However, no such proof could be adduced. The Ld. AO further observed that in one of the sale bill, the yarn was sold for Rs.195/- per kg. However, the price of cotton yarn (both hank and cones) as obtained from the Ministry of Textiles for the FY 2014-15, would show the following data: -

Items	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar
Cotton Yarn (Hanks)	249	250	250	250	250	248	241	237	229	225	222	224
Cotton Yarn (Cones)	207	210	209	206	200	192	189	188	188	184	184	184

3.3 The Ld. AO further observed that the price ranges from Rs.250 to Rs.222 per Kg for Hank Yarn and Rs.210 to Rs.184 per Kg for Cones and therefore, the sales were undervalued. Finally, Ld. AO adopted

average rate of Rs.184/- per Kg and applying the same to the quantity of finished goods sold, Ld. AO computed alleged suppression of sales for Rs.176.65 Lacs and added the same to the income of the assessee. The Ld. CIT(A) confirmed the stand of Ld. AO against which the assessee is in further appeal before us.

3.4 From the facts, it emerges that the assessee is a corporate entity and maintaining its books of accounts. The accounts are subjected to audit. No single instance of suppression of sales has been brought on record by Ld. AO and no discrepancies in the stock statement have been pointed out. There is no allegation that assessee's gross profits are not commensurate with earlier years or there is substantial change in the same. In our considered opinion, no such addition could have been made merely by relying upon abstract data as issued by Ministry of Textiles. The allegation of Ld. AO is not backed by any material evidence. The sale price would depend upon multiple factors viz. quality as well as quantity. The average price computed by Ld. AO at Rs.150/- is completely erroneous. Therefore, this addition has no legs to stand. By deleting the same, we allow the corresponding grounds raised by the assessee.

4. Addition of unexplained cash credit u/s 68

4.1 The Ld. AO observed that the assessee received cash from 22 parties which are tabulated in para 6.1 of the assessment order as under: -

No.	Name of Parties	Cash received (in Rs.)
1	Arunkumar Mills	37,31,931
2	Foundation One Infrastructure	5,75,000
3	Glassy Knitting	2,90,140

4	Ishwarva Knit Tex	23,997
5	Jayasree Hoseries	96,660
6	M.P. Textile	34,94,139
7	Nandhini Textiles	1,74,795
8	Network Clothing Company	7,67,820
9	Noble Clothing Company	1,90,422
10	NSK Garments	1,36,220
11	NSP Tex	2,28,000
12	Rajadhani Knitters	2,08,845
13	S Fashion	4,25,880
14	Sharadhalakshmi Enterprises	78,61,060
15	Shree Ajav Garments	7,48,727
16	Shree Knit Impex	4,35,812
17	Sri Balaji Fabric	38,260
18	Sri Ganapaty Murugan Textile	42,34,985
19	Sri Mahshakti Mills ltd	22,00,000
20	Sri Valli Murugan textiles	62,04,400
21	Welcome Knitters	1,97,700
22	Westrock Clothing Co.	1,03,200
	Total	3,23,67,993

In order to verify the genuineness of these parties, confirmatory letters were sent. However, the assessee could not provide address of 3 parties. The letters sent to 6 parties were returned un-served. Few of the parties denied having made any cash payment or having any transaction with the assessee. Considering the same, Ld. AO held that cash so received was unexplained cash credit u/s 68 and the same was added to the income of the assessee.

4.2 During appellate proceedings, the assessee assailed the addition on the ground that the business is conducted mainly through the brokers and it is the broker who plays a vital role in conducting sales as well as ensuring collection from the customers. The same was evident by the fact that a survey was conducted in the case of the assessee on 23.03.2017 wherein summon were issued to the broker Shri Senthil Kumar and his statement was recorded. Shri Senthil Kumar explained clearly his role as a broker to conduct the sales. The assessee submitted

that these amounts were, in fact, realization from debtors. The business was conducted through brokers and Ld. AO did not appreciate the business model of the assessee. The assessee, in the alternative, sought telescoping of addition of suppression of sales.

4.3 The Ld. CIT(A), while confirming this addition, accepted alternative argument of the assessee and allowed telescoping of addition of Rs.176.65 Lacs made on account of alleged suppression of sales against unexplained cash credits and restricted the impugned addition to the extent of Rs.147.02 Lacs. Aggrieved, the assessee as well as revenue is in further appeal before us.

4.4 From the facts, it emerges that the impugned listed parties are sundry debtors of the assessee. The ledger extract of all these parties have been placed on page nos. 52 to 111 of the paper book. Upon perusal of the same, it could be seen that all these are running accounts. The assessee has made sales to these parties and realized the payment through banking channels as well as through cash. In few cases, opening balances have been realized during this year. Most of the parties are having opening and closing ledger balances. In such a case, merely on the basis of outcome of confirmatory letters, the said receipts could not be treated as the income of the assessee. The sales are not in doubt. We find that all the ledgers are running ledgers which are duly reflected in the audited financial statements. The outcome of the confirmatory letter was to be understood in the background of the business model of the assessee. Undisputedly, assessee's business was being conducted through the brokers who play vital role in concluding sales and ensuring realization from the debtors. The same

would explain the fact the few of the debtors would not have direct dealing with the assessee. Therefore, we are of the considered opinion that this addition is not sustainable in law. Hence, we delete the impugned addition in its entirety i.e., to the extent of Rs.323.67 Lacs. The corresponding grounds raised by the assessee stand allowed. The revenue has assailed the telescoping as granted by Ld. CIT(A) and accordingly, this ground has been rendered infructuous.

Conclusion

5. The assessee's cross-objections stand partly allowed whereas the revenue's appeal stand dismissed.

Order pronounced on 1st November, 2023

Sd/-

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated :01-11-2023
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF