

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

I.T.A. No. 32/RAN/2020
Assessment Year : 2013-14

ACIT, CC-1, Ranchi	Vs.	M/s Chintpurni Steel Pvt. Ltd. (PAN: AACCC 3707 F)
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	16.08.2023
Date of Pronouncement / आदेश उद्घोषणा की तिथि	06.11.2023
For the Appellant / निर्धारिती की ओर से	Shri R. R. Mittal, CA
For the Respondent / राजस्व की ओर से	Smt. Rinku Singh, CITDR

ORDER/ आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the revenue against the order of the Commissioner of Income Tax- Patna-3, [hereinafter referred to as ‘ Ld. CIT(A) ’] dated 14.02.2020 for the assessment year 2013-14.

2. The only issue raised by the revenue is against the order of Ld. CIT(A) deleting the addition of Rs. 3,12,65,000/- by the AO as unexplained money u/s 69A of the Act.

3. Facts in brief are that the assessee is engaged in the business of manufacturing of sale of sponge iron under the name & style of M/s Chintpurni Steel Pvt. Ltd. The assessee filed return of income on 27.08.2013 declaring total income of Rs. 1,39,62,860/-. Thereafter the case of the assessee was selected for scrutiny and statutory notices were duly issued and served on the assessee. During the course of assessment proceedings, the AO observed from the enquiry report received from the

Director of Income tax (I & CI), Bhopal dated 26.03.2015 that the assessee has received Rs. 3,21,65,000/- from Shri Mahalaxmi Steels (Prop. Shri Shriram Nathu Kale). The AO noted that the sum was transferred from the current account of M/s Shree Mahalaxmi Steels to the bank a/c of M/s Chintpurni Steel Pvt. Ltd. The AO after making various observations about the modus operandi adopted by Shri Mahalaxmi Steels noted that huge amounts were deposited in the current account by the said concern and during the year Rs. 34,13,13,634/- which is inclusive cash deposits aggregating to Rs. 7,20,46,000/-. The AO observed in the assessment order that Shri Mahalaxmi Steels was not practically doing any business and it was only doing sale and purchase of steel scraps. Accordingly the AO came to the conclusion that the money received from Shree Mahalaxmi Steels is bogus and is accommodation entry and accordingly the same was added to the income of the assessee in the assessment framed u/s 143(3) of the Act dated 4.3.2016.

4. In the appellate proceedings, the Ld. CIT(A), after discussing in details the various evidences filed by the assessee before the AO as well as in the appellate proceedings, allowed the appeal by observing and holding as under:

I have carefully considered the findings of the AO and the submissions of the appellant. The undisputed fact is that the appellant is a Private Limited Company and engaged in the business of manufacturing of sponge iron. The appellant filed its regular of income for the A.Y.2013-14 on 27.08.2013 declaring total income of Rs. 1,39,62,860/-. The case of the appellant was selected for scrutiny under CASS. During the course of assessment proceedings, the AO was in receipt of information from the Director of Income- tax (I&CI), Bhopal. In this report, ITO (I&CI) investigated huge cash deposits made in the name of Anand Agrawal, Ashish Agrawal and Amit Purohit. These persons had made huge deposits in cash in their saving bank accounts without quoting PAN. On verification and through local enquiries conducted by the ITO revealed that all the three persons are fictitious/bogus as the query letters issued to them were returned un-served with the remarks "not known". On further perusal of the transaction in the bank accounts of the above persons it was noted that huge cash deposits were made and then on the very same day or on the next day, the cash was transferred to the current account of M/s Mahalaxmi Steels, Prop: Shri Shriram Naththu Kale, S/o Shri Naththuji Laharuji Kale, Balaghat. The report concluded that M/s Shri Mahalaxmi Steels is a bogus concern and never had any business activity at the address brought on record. The said bogus entity opened a current account bearing no. 912020029633894 with the Axis Bank Limited, Chandkhuri branch on 04-06-2012 and during the period from 08-06-2012 to 15-01-2013 a total of Rs.7,20,46,000/- was deposited in cash. Further deposits through RTGS / Cheques were also made by various bogus persons / entities as named in the assessment order. Hence the total amount of credit in the said current account was stood at Rs.34,13,13,634/- which is inclusive of cash deposits of Rs,7,20,46,000/-. These amounts were transferred to various ultimate beneficiaries through RTGS/Cheque

and the appellant M/s.Chintpuri Steel Pvt Ltd is stated to be one of the beneficiary who received Rs.3,21,65,000/- from M/s.Mahalaxmi Steels. Further, during the course of assessment proceeding the AO has also issued verification letter to M/s.Mahalaxmi Steels, however no response was received. In this back ground the AO show-caused the appellant as to why the amount of Rs.3,21,65,000/- received from M/s.Mahalaxmi Steels should not be considered as unexplained money u/s.69A of the Act. In response, the appellant submitted that they have sold Surplus or unusable Iron ore and Coal to M/s Mahalaxmi Steels and received sale consideration through banking channels. In support of the same the appellant filed copy of ledger account of M/s.Mahalaxmi Steels, Copy of bank account statement, TCS on the sale of Coal and Iron Ore and proof of depositing the same, copy of Regular Sales Tax return, details of challan, invoices, road permits and Form C, copy of statutory Excise records ER6 reflecting the month wise consumption/sale of Raw materials, Copy of acknowledgement evidencing the online filing of return with the Excise Department, Copy of Raw material register maintained in Form VI under rule 173G of the Central Excise Act, copy of Register maintained under rule 42(6) of the Jharkhand VAT Act etc. However, the AO having not satisfied with the details submitted and taking into account circumstantial evidences surrounding the transactions treated Rs.3,21,65,000/- as unexplained money u/s.69A of the Act and added to the total income.

5.3.2 On the other hand the appellant submitted that they have sold Surplus or unusable Iron ore and Coal to M/s Mahalaxmi Steels and received sale consideration through banking channels. In support of the same the appellant submitted copy of ledger account of M/s.Mahalaxmi Steels, Copy of bank account statement, TCS on the sale of Coal and Iron Ore and proof of depositing the same, copy of Regular Sales Tax return, details of challan, invoices, road permits and Form C. copy of statutory Excise records ER6 reflecting month wise consumption/sale of Raw materials, Copy of acknowledgement evidencing the online filing of return with the Excise Department, Copy of Raw material register maintained in Form VI under rule 173G of the Central Excise Act, copy of Register maintained under rule 42(6) of the Jharkhand VAT Act etc. The appellant also submitted that the AO has not allowed cross examination of the party on the basis of which impugned addition was made. Accordingly, the appellant relying on various case laws (supra) contended that the allegation of being beneficiary is wholly misconceived and contrary to the facts on record.

5.3.3 On perusal of rival contention I find considerable force in the submission of the appellant. It is a fact that the AO based on the report of Director of Income tax (I&CI), Bhopal, doubted the amounts credited in the bank account of the appellant as hawala entry. Further, it is also a fact that the appellant by furnishing all the necessary direct evidences submitted that the amounts credited in the bank account represents the sale consideration to the said party. However, in spite of all the documents submitted, Assessing Officer has not brought on record any evidence to prove that the transactions entered by the appellant which are otherwise supported by proper documents including third party documents are collusive/sham transactions so as to fasten the liability u/s 69A of the Act. Further, the assessing officer having failed to bring on record any material to prove that the transaction of the appellant was a collusive transaction could not have rejected the evidences submitted by the appellant. Certain facts as narrated in the report of DIT(I&CI) may appear highly suspicious but cannot take the place of evidence, and hence the addition made on surmise and suspicion by debunking all the direct evidences cannot be sustained. Moreover, the AO failed to accord cross examination of the party on the basis of which impugned addition was made nor is there any material on record to suggest that the appellant is also a party to this collusive / sham transaction. In this regard reliance is placed on the following decisions/judicial pronouncements.

The Hon'ble ITAT, Delhi Bench in the case of ITO Vs. Pawan Kumar Gupta [2011] 43 SOT 32 (Delhi - Trib.) held that - The issue was as to whether the Commissioner (Appeals) was justified in deleting the addition made by the Assessing Officer on the basis of the statements which were neither confronted to the assessee for rebuttal nor any opportunity was granted to the assessee to cross-examine the deponents in spite of repeated requests by the assessee to the Assessing Officer to allow such opportunity. Undeniably, the statements of 'B', his son 'R' and the accountant, were the basis of the addition made by the Assessing Officer under section 69A. Undeniably again, those statements were never provided to the assessee for rebuttal. Also, he was not afforded any opportunity to cross-examine the deponents of these statements. This was despite the fact that the assessee had made repeated requests to the Assessing Officer for providing the statements to him and for affording him an opportunity to cross-examine those deponents. Pertinently, even at the first appellate stage, the matter was remitted by the Commissioner (Appeals) to the Assessing Officer, however, once again, no such opportunity was provided to the assessee. It was on account of these facts that the Commissioner (Appeals) 'deleted the addition. The Commissioner (Appeals) further observed that the Assessing Officer had failed to establish any case against the assessee, nor was any corroborative evidence gathered by the Assessing Officer in relation to the assessee. The Assessing Officer, as observed by the Commissioner (Appeals), merely summarized the salient features of the assessment proceedings relating to 'B' and thereafter, summarily rejected the reply of the assessee as not acceptable. Though the Assessing Officer referred to the statements of 'B' and others admitting their involvement in cash loan transactions, these statements were not provided to the assessee. The allegation on the assessee having entered into loan transaction with 'B' was not proved, since nothing was brought on record by the Assessing Officer regarding any further investigations to confirm any such loan transaction. In view of the above, no error whatsoever, was found with the order of the Commissioner (Appeals), and therefore, the same was hereby confirmed.

The Hon'ble ITAT, Jaipur Bench in the case of P.V.Jewellers Vs. ITO[1993] 45 TTJ 541 (JP) held that - Where revenue had made additions under Section 69 on basis of photocopies of documents, statements and oath given by a foreigner, such additions could not be sustained unless assessee had been given an opportunity either to see original documents or even to cross-examine party in whose books of account these entries were made.

The Hon'ble ITAT, Mumbai Bench in the case of ACIT Vs. I & E Trade Consultants (P.) Ltd. [2017] 88 taxmann.com 638 (Mumbai-Trib.) held that- Where director of searched company gave statement that they were providing accommodation entries to assessee by way of paper entry of bills allegedly for providing services to assessee's customers, but said statement of searched person was not furnished by Assessing Officer to assessee nor cross-examination was allowed, challenge to reopening of concluded assessment by assessee was to be restored to file of Assessing Officer for dc novo determination of issue on merits.

The Hon'ble ITAT, Jaipur bench in the case of Smt. Renu Agarwal Vs. ACIT [2017] 88 taxmann.com 872 (Jaipur - Trib.) held that - Where seller had given a statement on oath that he had received Rs. 65 lakhs only from assessee on sale of land and that agreement to sell plot of land after carrying out construction for Rs. 1.41 crore was cancelled, in absence of any evidence of payment of any on-money on purchase of vacant plot, lower authorities had erred in confirming addition of differential amount on account of unexplained investment in purchase of plot.

5.3.4 In view of the above factual discussion and relying on the caselaws cited above, the AO is directed to delete the addition made of Rs.3,21,65,000/-.

Hence this ground is allowed.”

5. After hearing the rival contentions and perusing the material on record, we observe that the assessee is a private limited company registered under the Companies Act and was engaged the activity of manufacturing of sponge iron. We note that the surplus and unusable iron ore and coal were sold by the company to M/s Shri Mahalaxmi Steels during FY 2012-13. The assessee company has deducted TCS on the sale of coal and iron ore and deposited the same into Govt. treasury. We also observe that the regular sales tax returns have been filed after payment of sales tax into the treasury. We note that during the assessment proceedings the assessee has submitted a copy of ledger, details of challans , invoices, road permits, Form C received from the party alongwith copy of confirmation. Besides submitting these tax returns the assessee has produced books and other details before the AO. We note that the assessee has also filed a letter copy ER-6 reflecting month-wise consumption/sale of raw material with Excise Deptt, copy of acknowledgement evidencing the online filing of return with the Excise Department, copy of raw material register maintained in Form VI under Rule 173G of the Central Excise Act and all these records were also examined by the AO. The assessee has filed copy of contract, road permission received from Sales Tax and issued to the parties for the purpose of transportation of material. Similarly the AO also examined the register maintained under 42(6) of the Jharkhand VAT Act which was also produced before the AO. We note that TCS has been collected from the party and deposited on 20.05.2013 well within the due time and TCS return was also filed within due time. However the same was rejected online due to some mistake and was re-submitted by the assessee on 11/02/2016 and these details were also furnished before the AO during the assessment proceedings. We further note that the addition has been made u/s 69A of the Act which is again wrong as the provisions of section 69A of the Act deals with a case where the investments were not recorded in the books of accounts. We note that these sales were made by the assessee to Shri Mahalaxmi Steels and received money of Rs. 3,21,65,000/- which was duly recorded in the books of account of the assessee. In our opinion, money has been credited in the books of account and addition made u/s 69A of the Act by the AO is wrong and against the provisions of Act and was rightly deleted by the Id CIT(A).

We have perused carefully the order passed by the first appellate authority and observe that the Ld. CIT(A) has passed a very detailed and reasoned order which does not call any interference at our end. The Ld. CIT(A) has appreciated the facts of the case as well as the provisions of Act and ,after taking into account the facts of the case and provisions of the Act, allowed the appeal of the assessee. Considering these facts and circumstances we are inclined to uphold the order of Ld. CIT(A) by dismissing the appeal of the revenue.

6. In the result, appeal of the revenue is dismissed.

Order is pronounced in the open court on 6th November, 2023

Sd/-

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

Sd/-

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

Dated: 6th November, 2023

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- ACIT, CC-1, Ranchi
2. Respondent – M/s Chintpurni Steel Pvt. Ltd., Makhija Tower, Main Road, Ranchi-834001.
3. Ld. CIT(A)-Patna-3
4. PCIT- , Ranchi
5. DR, Ranchi Bench, Ranchi

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata