

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. 31/RAN/2020
Assessment Year : 2013-14

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| ACIT, CC-1, Ranchi | Vs. | M/s Koira Ores Pvt. Ltd. (PAN: AACCK 2165 R) |
| Appellant / (अपीलार्थी) | | Respondent / (प्रत्यर्थी) |

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| 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 in ground no. 1 by the revenue in the grounds of appeal is against the order of Ld. CIT(A) wherein the Ld. CIT(A) deleted the addition of Rs. 1,52,58,698/- as made by the AO on account of unexplained cash deposits into the

bank accounts when the assessee has not filed any return of income u/s 139(1) of the Act and even not responded to the various opportunities provided under receipt of notice. The revenue has raised three effective grounds of appeal which are extracted below:

1. That on the facts and in the circumstances of the case and in law the Ld. CIT(A) had erred in deleting the addition of Rs. 1,52,58,698/- on account of unexplained cash deposit without appreciating the facts that no return of income was filed by the assessee as required u/s 139 of the Act or even after receipt of notice u/s 148 of the Act, did not respond at all to the opportunities provided by the AO by issuing of notice/letters on 26.05.2016, 10.06.2016, 11.07.2016 & 19.07.2016. The assessee had failed to discharge the burden of proof to justify the transaction.

2. The Ld. CIT(A) erred in deleting the addition of Rs. 2,30,97,280/- on the basis of Form 26AS without verifying the inflated purchase claimed by the assessee as evident from records.

3. That on the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in deleting the addition of Rs. 10 Lakhs on account of estimated income for non-filing of return on a wrong appreciation of fact and law by accepting additional evidences such as tax audit report produced for the first time during the course of appellate proceeding and return of income filed after the passing the assessment order.

3. Facts in brief are that in the instant assessment year the assessee has not filed any return of income therefore the case of the assessee was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act on 28.01.2016. The assessee did not respond to various notices issued and therefore the assessment was framed ex-parte u/s 144 read with 148/143(3) of the Act. The AO on the basis of information available observed that the assessee has deposited cash of Rs. 1,52,58,698/- in its bank accounts. The AO observed that since the assessee has not filed any return of income and consequently not paid any tax on the income earned and therefore Rs. 1,52,58,698/- was treated as unexplained cash credit u/s 69 of the Act and the same was added to the income of the assessee in the assessment framed as stated hereinabove. Similarly the AO made addition of Rs. 2,30,97,280/- on the basis of information appearing in Form 26AS by holding that the assessee was in receipt of Rs. 2,30,97,280/- which was not explained even when the assessee was issued show cause notice dated 28.07.2016. The third addition was made by the AO on estimated

basis at Rs. 10,00,000/- for the reason that the assessee has not filed any return of income.

4. In the appellate proceedings, the Ld. CIT(A) deleted all these additions made in the assessment order. It was submitted before the first appellate authority, the AO has estimated the income from business of Rs. 10,00,000/- while making the addition in respect of cash deposits of Rs. 1,52,58,698/- and also made addition in respect of purchase of Rs. 2,30,97,280/- as reflected in Form 26AS on account of TCS deducted by the suppliers. It was contended before the Ld. CIT(A) that the assessee was passing through a very bad time as it has suffered huge losses in the business and the loans/credit limits taken from the bank became bad and the Punjab National Bank has initiated recovery proceedings against the assessee and the premises were taken over by the bank and the assessee was forced to the same. It was further submitted that the notice was not served on the assessee due to this reason as the assessee was no more in the said premises. The assessee has filed all the evidences in respect of cash deposits in bank, purchases which were duly recorded in the books of account and the books of accounts were duly audited by the auditors of the assessee. The Ld. CIT(A) called for a remand report on the evidences filed before the Ld. CIT(A) and after taking into account the remand report, reply by the assessee to the remand report, deleted all the additions by observing and holding as under:

"I have carefully considered the, finding of the Ld. AO, submission of the appellant, remand report of the AO and appellant's joinder to remand report. The undisputed fact is that the appellant is engaged in the business of crushing of iron ore Lumps as well as trading of crushed iron ore Lumps. As the appellant has not filed the return of income, for A.Y.2013-14 and moreover, the AO has some information regarding huge cash deposits in the bank, issued notice, u/s. 148 of the Act. During the assessment proceeding, the AO on perusal of bank statement noted that the appellant deposited cash aggregating to Rs. 1,52,58,698/-. Accordingly, the AO show-caused the appellant to prove the source of cash deposits / cash credits into the bank account. As the assessee failed to submit any explanation / details, the AO treated the same as unexplained cash credit u/s.68 and made an addition of Rs. 1,52,58,698/-. Further, the AO on perusal of Form 26AS noted that the assessee was in receipt of a total amount of Rs.2,30,97,280/-' on which TDS u/s,194A or 194J was deducted. Accordingly, the AO show-caused the appellant whether the said amount was included in the ROI. As the assessee failed to file any submission / details the AO treated the same as undisclosed business income and added the same to total income. Further, as the assessee not filed ROI for A.Y.2013-14, the AO by referring to the ROI filed, for earlier assessment years made an estimated addition of Rs. 10,00,000/- as income of the year. On the other hand the appellant submitted that its books of accounts for A.Y.2013-14 were audited u/s.44AB by

M/s.S.K.Patodia & Associates as on 30.09.2013, however the return of income could not be filed due to heavy losses suffered by the company coupled with recovery proceedings initiated by the Bank which led to vacation of premises which resulted in non service of income tax notices. .With regard to cash deposits the appellant by producing all the documentary evidences stated that the same represents the sale proceeds of Crushed Iron Ore Lumps. The appellant further submitted that out of total sales of Rs. 11,09,47,812/- the cash sales comprised only Rs 1,74,98,682/-. Pointing to the observation of the AO in the remand report, the appellant submitted that there is no column in the Tax Audit report to furnish the detail of cash sales made and moreover the AO failed to appreciate the fact that Sales / Vat Tax collected on these cash sales are duly reflected in the Vat return. With regard to addition made of Rs.2,30,97,280/- based on Form 26AS, the appellant submitted that it contained both TDS and TCS, whereas the AO totally misunderstood the content of 26AS and treated the same as receipt / income u/s,194A and 194J. The appellant further referring to 26AS and audited books of account submitted that it received interest income of Rs. 1,41,531/- on the FD held with banks and TDS u/s,194A was deducted and the interest income was duly accounted in the books of account. The appellant once again referring to Form 26AS and audited books of account submitted that it purchased iron ore lumps from various parties as mentioned in the assessment order and these seller parties' collected TCS 'u/s.206CJ & 206CH on the sales made to the appellant, and therefore the same cannot be an income in the hands of the appellant. Accordingly, appellant submitted that the findings of the AO in the assessment order as well as in the remand report are contrary to the facts on record. On a careful consideration I find considerable force in the submission of the appellant. It is a fact that the appellant is dealing in manufacture and trading of iron ore lumps and accordingly made total sales of Rs.11,09,47,812/- of which cash sales comprised only Rs 1,74,98,682/-. Out of the said cash sales the appellant deposited Rs. 1,52,58,698/- into the bank. Further, it is not the case of the AO that the cash deposited was from some other source, other than the sale proceeds of iron ore lumps more so when the AO has not doubted the audited books of accounts in the remand proceeding. In fact the AO in the remand proceeding miserably failed to scrutinize the documents which were already on record leave alone any worthwhile investigation in spite being empowered to do so u/s.250(4) of the Act. Therefore, I hold that the cash deposits made are from the cash sale proceeds of iron ore lumps and accordingly, the AO is directed to delete the addition made of Rs. 1,52,58,698/-. With regard to addition made of Rs.2,30,97,280/- based on Form 26AS, it is a fact that it contained both TDS and TCS, whereas the AO totally misunderstood the content of 26AS and treated the same as receipt / income u/s.194A and 194 J. The appellant received interest income of Rs. 1,41,531/- on the FD held with banks and TDS u/s.194A was deducted and the interest income was duly accounted in the books of account. Further on perusal of Form 26AS and audited books of account it is a fact that the appellant purchased iron ore lumps from various parties as mentioned in the assessment order and these seller parties' collected TCS u/s.206CJ & 206CH on the sales made to the appellant, and the appellant has duly accounted the same as purchases in the books of account. Therefore the AO both at the time of assessment as well as during remand proceeding, committed a grave error to treat TCS as TDS and thereby fastening the liability on the appellant. In view of these undisputed facts the AO is directed to delete the addition made of Rs.2,30,97,280/-. With regard to estimated addition made of Rs. 10,00,000/-, the fact is that the appellant got its account audited u/s.44AB from M/s. S.K.Patodia & Associates as on 30.09.2013 itself, however could not file the return due to heavy losses suffered by the company coupled with recovery proceedings initiated by the bank which led to vacation of premises which resulted in non-service of income tax notices. However the appellant e-filed the ROI on 23.09.2016 declaring total loss of (-) Rs. 1,47,29,944/-. Though the ROI is filed after the completion of assessment u/s 147/144 dated 28.07.2016, however the same along with audited B/S, P & L A/c and its schedules are available before the AO in the remand proceedings. Further during the remand proceedings,

the AO has not pointed any defect in the books of accounts produced before him. Under these circumstances, the estimated addition made of Rs. 10,00,000/- is directed to be deleted.

Accordingly, these grounds are allowed.”

5. We have heard rival submissions and perused the material on record. We note that the assessee was engaged in the business of crushing of iron ore lumps and trading of crushed/purchased iron ore. The manufacturing unit of the assessee was situated in the State of Orissa which was closed from the FY 2013-14 due to recall of the loan by the bank and the assessee suffered huge losses and went through very difficult time and severe financial crisis. Due to recovery proceedings initiated by the Punjab National Bank, the operation of the company was stopped and the office at Ranchi was also sealed by the Bank. Accordingly no notices were received by the assessee however on receipt of information regarding proceedings u/s 148 of the Act the assessee filed return of income on 23.09.2016 at NIL. We note that the assessee has maintained books of accounts accounting for all the business transactions including cash deposits, interest from bank and purchase of Iron ores etc which were duly audited by the Chartered Accountant/ auditor of the company. We note that in the assessment proceedings, the AO estimated the income of the assessee at Rs. 10,00,000/- from business besides making addition of Rs. 1,52,58,698/- in respect of cash deposits in the bank and also Rs. 2,30,97,280/- as appearing in Form 26AS in respect of purchases made by the assessee on which TCS was deducted by the suppliers of iron lumps. We note that the Ld. CIT(A) called for the remand report on the submissions made by the assessee and after receipt of remand report, the assessee was confronted with the same and the assessee has also filed reply to the said remand report. In the remand report we note that the AO has reiterated his earlier position that the assessee has not complied with the various notices in the assessment proceedings and pointed out that the cash sales were not recorded in TAR. We also note that the out of the total sales of Rs. 11,09,47,812/- the cash sales were only Rs. 1,74,98,682/-. We have also taken note of the AO observation that assessee has not shown the cash sales in the TAR whereas there is no such column meant for disclosing cash deposit into bank or cash sales in the Tax Audit Report. We also observe from the records

before us that the assessee has collected VAT /sales tax on the total sales including cash sales which was duly in the the VAT Returns filed before the competent authority and all these evidences were ignored in the by the AO during the remand proceedings and so much so that the AO has not allowed any opportunity to the assessee during remand proceedings and reiterated same observations in the remand report as were recorded during the assessment proceedings. We note that TCS has been deducted u/s 206 CJ and 206CH from the purchase of iron ore lumps totaling to Rs. 2,29,54,031/- made by the assessee from the various suppliers which was duly recorded in the books maintained by the assessee. We note that the assessee has paid for fee for professional and technical services which is liable for TDS u/s 194J which was also added and is included in the addition made of Rs. 2,30,97,280/-. We have also examined the evidences in the form of bank possession notice which proved that the premises of the assessee were attached after the assessee was evicted from the said premises. We observe that the Ld. CIT(A) has rightly appreciated all these evidences filed by the assessee and taken a correct and reasoned view in the matter. In view of this, we are inclined to uphold the order of Ld. CIT(A) by dismissing the grounds raised by the revenue.

8. 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 Koira Ores Pvt. Ltd. P.O. Rajdhanwar, Koira, Giridih,
Jharkhand-825412
3. Ld. CIT(A)-Patna-3
4. PCIT- , Ranchi
5. DR, Ranchi Bench, Ranchi

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata