

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

Before Dr. B. R. R. Kumar, Accountant Member

Ms. Astha Chandra, Judicial member

ITA No. 3901/Del/2019 : Asstt. Year: 2007-08

ITA No. 3902/Del/2019 : Asstt. Year: 2008-09

ACIT, Circle-Najibabad, Uttar Pradesh-246763 (APPELLANT)	Vs	M/s Parmarth Iron Pvt. Ltd., 10 th KM Stone, Nagina Road, Bijnor, Uttar Pradesh-246701 (RESPONDENT)
PAN No. AADCP1049C		

ITA No. 3903/Del/2019 : Asstt. Year: 2008-09

ITA No. 3904/Del/2019 : Asstt. Year: 2007-08

ACIT, Circle-Najibabad, Uttar Pradesh-246763 (APPELLANT)	Vs	M/s Parmarth Steel & Alloys Pvt. Ltd., 7 th KM Stone, Nagina Road, Bijnor, Uttar Pradesh-246701 (RESPONDENT)
PAN No. AABCP1411A		

Assessee by : Sh. Anmol Jagga, Adv. &

Sh. Mayank Patawari, CA

Revenue by : Ms. Monika Dhami, CIT-DR

Date of Hearing: 30.08.2023

Date of Pronouncement: 17.11.2023
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ORDER

Per Bench:

The present appeals have been filed by Revenue against the orders of Id. CIT(A), Moradabad dated 18.02.2019 and 19.02.2019.

2. Since, the issue involved in all these appeals are similar, they were heard together and being adjudicated by a common order.

3. In ITA No. 3901/Del/2019, following grounds have been raised by the Revenue:

"1. Whether the Ld. CIT(A) was right in deleting the addition made by the AO amounting to Rs. 118,50,99,398/- only on the basis of the order of the Hon'ble CESTAT, Allahabad which has been challenged by Commissioner, Central Goods & Service Tax, Meerut before Hon'ble High Court, Allahabad.

2. Whether the Ld. CIT(A) was right in disregarding the fact that at the time of search by the DGCEI at the premises of the M/s PIPL & Others, concrete evidences of clandestine removal of goods were founded in the form of hard disc's, CD's and pen drives etc. and on the basis of the information contained therein the statements of concerned persons were recorded and they confirmed the information.

3. Whether the Ld. CIT(A) was right in following the appeal order of the Hon'ble CESTAT regarding the observation that in view of the retraction from statements by the above persons and holding that in view of the retraction the material found and impounded in the form of hard discs, CD's and pen drives etc. has no evidential value ignoring the fact that all those persons were closely related/connected with the company as employees/director/customers.

4. Whether the Ld. CIT(A) was right in ignoring the fact that the retraction from confession by the concerned persons came after a long period of more than 5 years because if there were any truth in their retraction it must have come either immediately after recording of the statements or at least within 2-3 months and that the retractions filed by the persons were in a stereotyped manner which indicates that the same were as per dictation of others.

5. Whether the Ld. CIT(A) was right in not paying attention to the fact that the Commissioner of Central Excise & Service Tax observed that, after retraction the persons were given another opportunity to tender their statements in which some of them stated that they stood by their earlier statements and that they had retracted their earlier statements under pressure from Shri Raj

*Kamal Aggarwal & Shri Atul Aggarwal, Directors of M/s
PIPL and the lawyer of the company."*

4. The assessee filed the return of Income on 28.10.2007 showing total income of Rs. 72,87,050/-. The regular assessment was completed u/s 143(3) on total income of Rs. 85,63,440/- vide order dated 30.12.2009.

5. In this case, a search and seizure operation was carried out on 10.07.2007 by the central excise department in the factory and office premises of the assessee company as well as suppliers of material and several incriminating documents were found and seized. During search, they found that assessee has sold 191412.03 MT MS bars during the period Feb 2004 to June 2007 without recording sales in the books of account.

6. On the basis of information received from the central excise department, notice u/s 148 issued after obtaining necessary approval from the competent authority. Thus on the basis of information received, the unrecorded sales of Rs.118,50,99,398/- which were not recorded in the books of account treated as extra profit of the assessee and added back to the total income of the assessee Co. and assessment was completed u/s 147/143(3) on 29.03.2016 at total assessed income of Rs. 119,36,62,840/-.

7. Aggrieved by the re-assessment order the assessee filed appeal before the Ld. CIT(A), Moradabad. The Ld.CIT(A), Moradabad, vide order dated 18.02.2019 deleted the addition of Rs.118,50,99,398/- following the appeal order of the Hon'ble CESTAT and on the ground that AO relied upon the information

passed on by the excise department. Aggrieved, the Revenue filed appeal before us.

8. Heard the arguments of both the parties and perused the material available on record. It transpires that,

- i. In this case, there was a specific direction of Hon'ble Allahabad High Court to the Excise Department that they should allow cross examination of witnesses on whom they rely while making the assessment.
- ii. Hon'ble CESTAT held that the Excise Department failed to adhere to the directions given by the Hon'ble High Court as mentioned above.
- iii. Hon'ble CESTAT held that the witnesses, who were cross examined retracted from their earlier statements.
- iv. The Hon'ble CESTAT also held that there was no other evidence with the Excise Department except for statements of various witnesses.
- v. The Hon'ble CESTAT very categorically stated that the charge of clandestine production or removal cannot be upheld against the appellant.
- vi. The Hon'ble CESTAT set aside the order of Commissioner of Excise with the above observations.

9. We find that the AO has solely relied upon the information passed on by the Excise Department. No additional inquiry has been made by the AO. The Assessing Officer has stated that as per the information received from the Excise Department, there were unrecorded sales of 191412.03 MT of MS Bar during the period Feb 2004 to June 2007, based on which he has made addition of Rs. 118,50,99,398/- for the period 01.04.2006 to

31.03.2007. Now the very basis on which, the AO has made addition has been struck down by the Hon'ble CESTAT vide its order No. A/71040-71047/2018-EX(DB) dated 09.04.2018. Therefore, the Id. CIT(A) held that the addition made by the AO cannot be sustained. Further, it is also seen that the AO has rejected the books of accounts u/s 145 and even then passed order u/s 147/143(3) rather than passing best judgment assessment u/s 144 of the Income Tax Act, 1961.

10. Hence, in view of the clear facts narrated above, we decline to interfere with the reasoned order of the Id. CIT(A).

11. In the result, the appeals of the Revenue are dismissed.
Order Pronounced in the Open Court on 17 /11/2023.

Sd/-

(Astha Chandra)
Judicial Member

Dated: 17/11/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR