

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI  
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।  
Before Shri V. Durga Rao, Judicial Member &  
Shri Manoj Kumar Aggarwal, Accountant Member

आयकर अपील सं./I.T.A. No.693/Chny/2023  
निर्धारण वर्ष/Assessment Year: 2020-21

&

**C.O. No. 27/Chny/2023 [In I.T.A. No.693/Chny/2023]**

The Assistant Commissioner of  
Income Tax,  
Central Circle 1(1),  
Chennai.

Vs. M/s. Prakash Ferrous Industries  
Private Limited,  
New No. 36, New Avadi Road,  
Kilpauk, Chennai 600 010.  
[PAN:AAECP7094C]

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent/Cross Objector)

Department by : Shri Nilay Baran Som, CIT  
Assessee by : Shri Shashi Kumar Agarwal, CA

सुनवाई की तारीख/ Date of hearing : 07.12.2023  
घोषणा की तारीख /Date of Pronouncement : 20.12.2023

**आदेश /ORDER**

**PER V. DURGA RAO, JUDICIAL MEMBER:**

This appeal filed by the Revenue and the Cross Objections filed by the assessee are directed against the order of the Id. Commissioner of Income Tax (Appeals) 18, Chennai, dated 23.03.2023 relevant to the assessment year 2020-21. The Revenue has raised following grounds:

- 1. The order of the Id. Commissioner of I. T. (Appeals) is erroneous on facts of the case and in law.*
- 2. The learned CIT(A) erred in deleting the addition made u/s. 69A of the IT Act, towards unexplained money, amounting to Rs. 96,54,335/- , without*

*appreciating that the said amount was not found recorded in the books of accounts of the assessee.*

*2.1 The learned CIT(A) erred in observing that the addition was made without establishing the identity of Shri. Manohar either in the assessment order or in the remand report, whereas in the remand report dated 16.2.2023, the identity of Shri. Manohar was established, as an employee of M/s. Shakthi group, looking after accounts of Shakthi group, from whose cabin the loose sheets were seized and Shri. Manohar had stated that the entries pertain to cash payments made by Shakthi group to the assessee company and therefore the CIT(A) had deleted the addition on the assumption of an incorrect fact.*

*3. The learned CIT(A) erred in deleting the addition made u/s. 69C of the IT Act, towards unexplained expenditure, amounting to Rs. 3,84,840/- , without appreciating that, the said amount was found entered in the seized loose sheets, in specific codes and the same was explained by the employee of M/s. Shakthi Group, as unaccounted purchases made by the assessee company from M/s. Emjay Steel Udyog P Limited, which is assessable u/s. 69C of the IT Act, as unexplained expenditure.*

*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 Id. CIT(A) may be set aside and that of the Assessing Officer be restored.*

2. Brief facts of the case are that a search and seizure operation under section 132 of the Income Tax Act, 1961 ["Act" in short] was conducted in the case of M/s. Sakthi Ferro Alloys India Private Limited, M/s. Sakthi Steel Industries Ltd. and Sri Kannaiah Naidu Anandh by the Investigation Wing on 25.07.2019. As part of the said search proceedings, a survey operation was also conducted at the premises of M/s. Prakash Ferrous Industries Private Limited [assessee] and seized various items. The Assessing Officer of M/s. Sakthi Ferro Alloys India Private Limited, M/s. Sakthi Steel Industries Ltd. and Sri Kannaiah Naidu Anandh has recorded satisfaction note under section 153C of the Act

stating that the seized materials pertain to business transactions relating to the assessee for various years from financial years 2013-14 to 2019-20. On being satisfied that the seized materials have a bearing on the determination of total income of the assessee, the Assessing Officer initiated proceedings under section 153C of the Act on 09.09.2021 for the assessment year under appeal. The assessee filed original return of income on 03.11.2020 declaring a total income of ₹.2,15,49,290/-. Notice under section 153C of the Act was issued to the assessee on 09.09.2021. In response to the notice under section 153C of the Act, the assessee has requested to treat original return of income as return of income filed in response to the notice under section 153C of the Act. Notice under section 142(1) of the Act was issued on 21.09.2021 and show-cause notice was also issued to the assessee on 23.09.2021.

3. With regard to the deletion of addition of ₹.96,54,335/- under section 69A of the Act, during the course of search, a number of loose sheets were found in the cabin of Shri Manohar located at premise at H Block, 21<sup>st</sup> Main Road, Anna Nagar, Chennai-40. In the loose sheet dated 18.07.2019 and 19.07.2019, the Assessing Officer has noted that there was mention of ₹.95,00,000/- and ₹.1,54,335/-. On questioning about the same, Shri Manohar had accepted that the loose sheet was called as

“cash paper”. Thus, the unaccounted money of ₹.95,00,000/- and ₹.1,54,335/- received by the assessee from M/s. Sakthi group of companies was added in the hands of the assessee and brought to tax under section 68 of the Act. On appeal, after considering the remand report of the Assessing Officer as well as rejoinder of the assessee, the Id. CIT(A) deleted the addition of ₹.96,54,335/-.

4. Aggrieved, the Revenue is in appeal before the Tribunal. The Id. DR has relied upon the grounds of appeal and supported the order passed by the Assessing Officer.

5. On the other hand, the Id. Counsel for the assessee has strongly supported the appellate order passed by the Id. CIT(A).

7. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. A search under section 132 of the Act was conducted in the case of M/s. Sakthi Ferro Alloys India Private Limited, M/s. Sakthi Steel Industries Ltd. and Sri Kannaiah Naidu Anandh by the Investigation Wing on 25.07.2019. As part of the said search proceedings, a survey operation was also conducted at the premises of M/s. Prakash Ferrous Industries Private Limited [assessee] at No. 36, New Avadi Road, Kilpauk, Chennai 600 010 on

25.07.2019. In the assessment order, the Assessing Officer has noted that during the course of search, a number of loose sheets were found in the cabin of Shri Manohar located at premise at H Block, 21<sup>st</sup> Main Road, Anna Nagar, Chennai 40 and the same was vide Annexure-ANN/CARS/SSIL/LS/S-1(Vol-2) and (Vol-1) and seized. In the loose sheet dated 18.07.2019 and 19.07.2019, there was ₹.95,00,000/- and ₹.1,54,335/- mentioned against M/s. Prakash Ferro Industries Private Limited (assessee). One Mr. Manohar was questioned by the Assessing Officer and Mr. Manohar has accepted that it is cash paper and hence, the Assessing Officer inferred that ₹.95,00,000/- and ₹.1,54,335/- were unaccounted money received by the assessee from M/s. Sakthi Group of company and added in the hands of the assessee.

7.1 We find that admittedly, the loose sheets were not found in the premises of the assessee and it was found at the premises belong to Mr. Manohar, at H Block, 21<sup>st</sup> Main Road, Anna Nagar, Chennai 40. In the assessment order, the Assessing Officer has not recorded anything about who is Mr. Manohar, what is the relationship of Mr. Manohar with the assessee. Not only that, the Assessing Officer has not given any opportunity to the assessee in calling for explanation about the loose sheet found at the premises of Mr. Manohar. The Assessing Officer,

based on the statement of Mr. Manohar, came to a conclusion that there is unaccounted money of the assessee. We find that there is no corroborative evidence/basis for the Assessing Officer to arrive at such conclusion.

7.2 On appeal, the Id. CIT(A), after considering the detailed submissions made by the assessee, deleted the addition made by the Assessing Officer and relevant portion of the order is reproduced as under:

*“9.2.4 I have considered the submissions of the appellant and the reasons given by the AO. In the remand report, the AO has accepted that the provisions of section 68 will not apply but the provisions of section 69A would apply. To apply the provisions of section 69A, there should be unexplained money found. In the appellant’s case no cash was found and seized. The entire addition was made based on the loose sheets. These loose sheets were not seized from the appellant. These loose sheets were admittedly seized from the cabin of Sri Manohar. Who is this Manohar has also not been mentioned in the assessment order or in the remand report. According to the AO, Sri Manohar has accepted that the sheet is called as “cash paper”. Based on this statement, the AO inferred that the figures stated in the slip viz. 95,000.00 represents Rs.95,00,000 and 1543.35 represents Rs.1,54,335/- and further that these amounts represent unaccounted money received by the appellant from M/s Sakthi group of companies. The AO has not brought out any document or records in support of the above inference. As submitted by the appellant, he was not called upon to explain the same before the AO completed the assessment. There was no discussion about the enquiry made by the AO with the appellant on this issue. All things considered, I am of the view that the AO has not made out any case for making an addition of Rs.96,54,335/- either under section 68 or under section 69A of the Act. I therefore delete the addition of Rs.96,54,335/- made by the AO and allow the grounds raised.”*

7.3 In view of the above findings of the Id. CIT(A), we find that the Id. CIT(A) has rightly deleted the addition made by the Assessing Officer.

Thus, we find no reason to interfere with the order passed by the Id. CIT(A).

8. The next ground raised in the appeal of the Revenue relates to deletion of addition of unexplained expenditure of ₹.3,84,840/-. As per seized document vide Annexure-ANN/GARs/SSIL/LS/S-1(Vol-2), in the loose sheets dated 18.07.2019 and 19.07.2019 on page No. 679 and page No. 673, there were details of unaccounted purchase totalling to ₹.3,18,400/- and ₹.66,440/- respectively made by the assessee (M/s. Prakash Ferrous Industries Private Limited). After considering the explanation of one Mr. Manohar, the Assessing Officer has assumed that the assessee made unaccounted purchases from M/s. Emjay Steel Udyog Private Limited and accordingly treated as unexplained expenditure in the hands of the assessee and brought tax. On appeal, after considering the submissions of the assessee, the Id. CIT(A) deleted the addition.

8.1 We have heard the rival contentions. It is an admitted fact that the Assessing Officer has made the addition based on the basis of illegible sheet of paper from where nothing can be deduced/ readable. In the assessment order, the Assessing Officer placed copy of the illegible paper as part of the order and we are unable to read a single letter from

that paper. Further, we find that the Assessing Officer has not made any mention about verification of the purchases of the assessee as to whether the assessee had made any purchases from the said company or the quantum of purchases made. If at all the assessee made any purchase from M/s. Emjay Steel Udyog P. Ltd., the Assessing Officer should have called upon the assessee to explain as to why such purchases should not be treated as unexplained one in the light of the seized documents. But, the Assessing Officer has not conducted any such enquiry or narrated anything in his remand report submitted before the Id. CIT(A). After considering all the detailed, the Id. CIT(A) has deleted the addition made by the Assessing Officer and relevant portion of the appellate order is reproduced as under:

*9.3.3 I have considered the submissions of the appellant and the reasons given by the assessing officer. Based on the reasoning given in the assessment order, I can only say that the AO has not given any cogent reasoning for making the addition of alleged unexplained expenditure u/s 69C of the Act. The AO ought to have verified the purchases of the appellant as to whether the appellant had made purchases from M/s Emjay Steel Udyog P Ltd. and the quantum of purchases made. If the appellant had made such purchases from M/s Emjay Steel Udyog P Ltd., the AO ought to have called upon the appellant to explain as to why such purchases should not be treated as unexplained one in the light of the seized documents referred to in the assessment order. No such enquiry was conducted by the AO. Remand report also has not added any further details. Under section 69C any expenditure incurred for which no source is available, then such expenditure would be considered as unexplained expenditure. The AO has not brought on record any evidence to show as to whether the appellant had shown purchases from the above company in the books of accounts or not. If the same is shown in the books of accounts, then the source for such purchases should be considered to have been explained and such expenditure recorded in the books of accounts*

*cannot be considered as unexplained expenditure u/s 69C of the Act. If the same is not shown in the books of accounts, then the purchases by the appellant outside the books of accounts should be proved with some evidence for source. In the appellant's case, the addition under section 69C was made with insufficient grounds and the same cannot stand in the eyes of law. The AO has not commented on this issue even in the remand report called for. I therefore delete the addition of Rs.3,48,340/- made under section 69C of the Act.*

*9.4 As the issues are allowed on merits, the legal grounds raised are not adjudicated.*

8.2 In view of the above findings of the Id. CIT(A), we find that the Id. CIT(A) has rightly deleted the addition made by the Assessing Officer. Thus, we find no reason to interfere with the order passed by the Id. CIT(A).

9. Coming to the Cross Objections, the assessee has raised legal issue of issuing notice under section 143(2) of the Act. The Id. DR has submitted that in case of search and seizure, issue of notice under section 143(2) of the Act is not mandatory for finalization of assessment under section 153A of the Act.

9.1 With regard to issuing notice under section 143(2) of the Act while finalizing assessment under section 153A of the Act, in the case of Ashok Chaddha v. ITO [2011] 337 ITR 399 (Delhi), the Hon'ble Delhi High Court has observed and held as under:

*There is no specific provision in the Act requiring the assessment made under section 153A to be after issue of notice under section 143(2). The words "so*

*far as may be” in clause (a) of sub section (1) of Section 153A could not be interpreted that the issue of notice under section 143(2) is mandatory in case of assessment under section 153A. The use of the words, “so far as may be” cannot be stretched to the extent of mandatory issue of notice under section 143(2). A specific notice is required to be issued under Clause (a) of sub-section (1) of section 153A calling upon the persons searched or requisitioned to file return. That being so, no further notice under section 143(2) can be contemplated for assessment under section 153A.*

Respectfully following the decision of the Hon’ble Delhi High Court in the case of Ashok Chaddha (supra), we are of the considered opinion that the objection of the assessee is not liable to be maintained. Accordingly, the objection of the assessee is rejected.

10. The next objections of the assessee are that no satisfaction prescribed under section 153C of the Act was provided to the respondent assessee and also erred in framing assessment order dated 29.09.2021 under section 144 in contravention of the provisions of section 144.

10.1 In the remand report submitted before the Id. CIT(A), the Assessing Officer has stated that vide its reply dated 23.09.2021, the assessee itself has commented that the assessee was in receipt of the satisfaction note dated 08.09.2021. Thus, the contention of the assessee that the satisfaction note was not provided to the assessee is liable to be rejected. Moreover, in the same remand report, the Assessing Officer has very well clarified that by oversight and typographical error, the order under section

143(3) r.w.s. 153C was wrongly mentioned as 144 r.w.s. 153(C) of the Income Tax Act. Thus, the objections of the assessee are rejected.

11. In the result, the appeal filed by the Revenue as well as Cross Objection of the assessee are dismissed.

Order pronounced on the 20<sup>th</sup> December, 2023 at Chennai.

Sd/-  
(MANOJ KUMAR AGGARWAL)  
ACCOUNTANT MEMBER

Sd/-  
(V. DURGA RAO)  
JUDICIAL MEMBER

Chennai, Dated, the 20.12.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent, 3. आयकर आयुक्त/CIT, 4. विभागीय प्रतिनिधि/DR & 5. गार्ड फाईल/GF.