Additional Commissioner of Vs. Agarwal Metal Works Ltd.

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : May-30-2003

Reported in : (2004)84TTJ(Delhi)86

Judge : S Khan, D Singh

Appellant : Additional Commissioner of

Respondent : Agarwal Metal Works Ltd.

Judgement :
1. This is an appeal by the Revenue. The assessee, in this case, is a company deriving income from manufacture and sale of copper, brass, zinc and aluminium sheets, etc.

"On the facts and in the circumstances of the case, the learned CIT(A) has erred in law in : 1. directing to allow depreciation on trollies at the rate prescribed under the rules when none was permissible and thereby restricting the disallowance of Rs. 5,77,656 said to be representing the total cost of fabrication of 125 trollies claimed as depreciation, 2. deleting the addition of Rs. 1,85,39,180 made in the trading account by rejecting the book version under Section 145 of the Act, 2(a). not appreciating the import of specific discrepancies found in the sales account and GP rate, etc., 3. deleting the disallowance of Rs. 5,50,990 made on account of bogus claim of expenses under the head 'quantity discount', 4. deleting the disallowance of Rs. 7,400 made out of professional fee made under Section 40A(2) of the Act.

That the appellant craves for permission to and delete or amend the ground of appeal before or at the time of hearing of appeal." 2. The assessee claimed 100 per cent depreciation on the cost of 125 trolleys. Fabrication of these trolleys was got done through concern M/s Shiv Engineering Works & M/s Pradeep Engineering Works, Rewari. For the reasons given in the impugned assessment order, the AO held that the claim of fabrication of 125 trolleys was sham and bogus. He, therefore, disallowed the claim of depreciation on the said trolleys.

3. Aggrieved the assessee preferred first appeal before the learned CIT(A) who after considering the submissions made before him held that the disallowance of claim of depreciation on the said trolleys was unjustified and wrong. He made the following observations in this regard: "I have considered the submissions of the appellant and have also gone through the reasons for which the claim of the appellant was disallowed. The main reasons for disallowing the claim of the appellant were that : (a) The fabrications were not found at the address mentioned in Rewari.

(b) The AO was of the opinion that the fabricators did not have necessary machinery for the fabrication of the trolleys. The AO was also of the view that the fabricators lack necessary infrastructure, Whereas the claim of the appellant an is that they have expanded the business and the turnover this year has increased from Rs. 23.78 crores to Rs. 33.13, crores and, therefore, they had to go for modernisation. It was stated that they have informed the AO during the course of assessment proceedings that the fabricators have moved from Rewari to their villages and they are the ones who supplied the latest address to the AO. (c) The appellant had got fabricated unusually high number of trolleys for which according to the AO there was no justification.

(d) It was stated that the statement of fabricators were recorded and they had confirmed the fact that they had fabricated the trolleys for the appellant concern.

(e) It was stated that for the fabrication of trolleys all that the fabricators required were a lathe machine and welding facilities which they had.

(f) It was stated that they had procured the material and supplied to the fabricators and they only have to perform the task of welding. It was stated that during the course of assessment proceedings they had supplied full detail with regard to the purchase of this material and supply of material with evidence of gate pass (to the fabricators). It was submitted that this evidence has not been rebutted or faulted with.

(g) It was stated that the trolleys were there and their existence could be verified at any point of time.

So far as the question of procurement of material for the fabrication of trolleys is concerned, the AO has not doubted these purchases. The labour cost for the manufacture of the trolleys account for only 25 per cent of the total cost. With the evidence of supply brought on record both during the course of assessment proceedings and during the appeal proceedings, the fabrication of trolleys cannot be denied. The only question that rests for consideration is whether the depreciation on trolleys is to be allowed at 100 per cent as claimed or depreciation at the lower rates. During the course of appeal proceedings, the appellant has submitted the design and the appellant is required to give the cost of trolleys passed on these drawings. Thus, the trolleys which cost less than Rs. 5,000 will be entitled to 100 per cent and for the rest of the trolleys the depreciation will be allowed at the rates prescribed in the rule. The appellant will give the working in respect of the trolleys." 4. Aggrieved the Revenue has come up in second appeal before the Tribunal.

5. We have heard both the sides and considered the materials on the file. The learned Departmental Representative relied on the detailed reasons given by the AO in the impugned assessment order for holding that the claim of fabrication of 125 trolleys was not proved and it was sham and bogus. He contended that the learned CIT(A) directed the AO to allow depreciation on the said trolleys without rebuttal of the reasons given by the AO for holding that the claim of fabrication of the said trolleys was sham and bogus.

6. The learned Authorised Representative of the assessee on the other hand relied on the order of the learned CIT(A). He reiterated the submissions made

before him.

7. After considering the rival submissions and the materials on the file, we are of the view that on the facts and in the circumstances of the case and in view of the detailed reasons given by the AO for rejecting the claim of depreciation on the said trolleys, the learned CIT(A) was not justified in directing the AO as above to allow depreciation. It will be seen from the observations of the learned CIT(A) reproduced above that he had not rebutted the reasons and basis for rejection of the claim by the AO and merely observed that the AO had not doubted the purchase and procurement of material for the fabrication of trolleys. The labour cost for the manufacture of the trolley was only 25 per cent of the total cost. With the evidence of supply brought on record both during the course of assessment proceeding and during the appeal proceedings, the fabrication of trolleys could not be denied. He added that the only question that rested for consideration was whether the depreciation on trolleys had to be allowed at 100 per cent as claimed or at lower rate. These observations and findings of the learned CIT(A) were not consistent with and appropriate to the fact and evidence brought on record.

Depreciation was not admissible on purchase and procurement of material for fabrication of trolleys. Depreciation was admissible on the actual trolley used in the business of the assessee. The AO had after necessary enquiry and verification came to the conclusion that there was actually no fabrication of these trolleys. The aforesaid parties through whom the fabrication was claimed to have been done were not in existence. There was no actual corroboration and evidence of fabrication of the said trolleys. The findings of the learned CIT(A) was, therefore, misconceived and wrong. The assessee had failed to prove the fabrication of the trolleys and therefore the use of the trolleys in its business which could have entitled it to the depreciation was not proved.

8. In the above view of the matter, we hold that the AO was justified in disallowing the claim of 100 per cent depreciation on the said trolleys and the learned CIT(A) was wrong in directing the AO to allow the claim of depreciation. Accordingly, ground No. 1 is allowed.

9. The next grievance of the Revenue in this appeal is against the deletion of the addition of Rs. 1,85,39,180 in the trading account. The AO observed that the GP shown worked out to 13.18 per cent which was low. He further observed that the assessee had not maintained correct record of sale. There were discrepancies in bank reconciliation statement, work in progress, closing stock as per assessee's books and that declared to the bank. There were also discrepancies in the accounts of various customers. He also observed that the assessee had utilised the same sale voucher book for issuing the duplicate bills. In its explanation the assessee contested all the allegations to claim that the books of accounts were in order and there were no discrepancies in the bank reconciliation statement, work-in-progress, etc. It claimed that the goods were excisable and there were no discrepancies found by the excise authorities.

10. The AO was not satisfied and convinced. He held that the books of accounts were not reliable and trading results were not acceptable.

Invoking the provision of Section 145(2), he rejected the trading results and estimated sales at Rs. 45,13,53,130 as against declared sales of Rs. 33,47,55,892 and applying GP rate of 13.79 per cent on the estimated sales, he made the impugned addition in the trading account.

11. Aggrieved the assessee preferred first appeal before the learned CIT(A) who after considering the submissions made before him deleted the impugned addition.

12. Aggrieved the Revenue has come up in second appeal before this Tribunal.

13. The learned Departmental Representative relied on the AO's order and reiterated the reasons given in the assessment order for the impugned addition.

14. The learned Authorised Representative of the assessee, on the other hand, relied on the order of the learned CIT(A).

15. After considering the rival submissions and the materials on the file, we are of the view that on the facts and in the circumstances of the case, neither the AO was correct in making the lump sum addition of Rs. 1,85,39,180 by enhancing the sale and GP on estimate, nor the learned CIT(A) was justified in completely

deleting the impugned addition. The proper and correct course of action in the case was to make the addition to the extent of unrecorded sale, unexplained discrepancies in the accounts, etc. From the perusal of the assessment order it is clear that there were several discrepancies which had not been satisfactorily and convincingly explained and reconciled for which addition was called for and warranted in the case, the learned CIT(A) should have at best set aside the matter to the AO for giving fresh opportunity to the assessee to explain and reconcile the discrepancy and then the AO should have restricted the addition to the extent of unexplained discrepancy. Addition if any could be made to the extent of specific unaccounted sale, difference in stock, difference in the accounts of the customers, etc. and not in the general way of enhancing the sale and GP on estimate. We find that the AO had mentioned specific details of such discrepancies and differences which had not been convincingly explained and reconciled either before the AO or before the learned CIT(A). It is noted that the AO had found discrepancy in the accounts of 14 customers and suppliers. It was found on the basis of the information obtained under Section 133(6) of the Act from the customers and suppliers. The details in this regard were mentioned at pp. 11 to 23 of the impugned assessment order. The reconciliation of these accounts was necessary. In case of assessee's failure to reconcile the accounts, addition would be restricted to the amount of discrepancy. Any enquiry and investigation must be brought to logical conclusion, otherwise there was no meaning of initiating the enquiry and investigation. Based on the enquiry and investigation specific amount of discrepancy must be worked out and additions if any, after giving opportunity to the assessee for being heard, must be restricted to that. Neither the AO nor the learned CIT(A) appreciated these matters. The AO, to make his task easy, made addition by enhancing sale and GP on estimate and the learned CIT(A), to make his own task easier, deleted the entire addition. Neither course of action was proper and just.

16. In the above view of the matter, we consider it imperative in the interest of justice and fair play to restore the matter to the AO for passing fresh order after giving fresh opportunity to the assessee.

Addition if any called for must be restricted to the actual amount of discrepancy/difference in sales, purchase, stock, declaration to the bank, customers and suppliers accounts, etc. We order accordingly.

17. The next grievance of the Revenue is against the deletion of disallowance of Rs. 5,50,990 on account of bogus claim of expenses under the head quantity discount. The assessee had shown payment of cash and quantity discount of Rs. 6,58,150 to M/s C.L. Gupta & Sons, Moradabad. The AO observed that the assessee had not allowed similar discount to other bulk buyers. He, therefore, disallowed the claim of payment of discount to the said party.

18. Aggrieved the assessee preferred first appeal before the learned CIT(A). The assessee submitted that cash discount at 1 per cent was allowed to the said party. In addition quantity discount at Rs. 5 per kg. was given vide the agreement dt. 19th April, 1991 under which it was agreed that the assessee-company would allow quantity discount at Rs. 5 per kg. if the said party purchased quantity exceeding 50 MT in the year. It was stated that the said party purchased 100 MT and, therefore, it was allowed quantity discount of Rs. 5,50,990 and the balance discount was under the head cash discount. It was contended that the said quantity discount was wholly and exclusively in the interest of business and the same was allowable under Section 37(1) of the Act. Reliance was placed on the decisions reported in CIT v.Walchand & Co. (P) Ltd. (1967) 65 ITR 381 (SC) and CIT v. Gobald Motor Service (P) Ltd. (1975) 100 ITR 240 (Mad).

19. The learned CIT(A) was satisfied and convinced. He, therefore, deleted the disallowance of Rs. 6,58,150. He made the following observations in this regard : "As regards the question of quantity discount is concerned, the appellant has allowed quantity discount based on the agreement. The case of the AO is that this is a sham transaction and this agreement was not entered into for genuine business or commercial consideration, The AO has also observed that it was an afterthought to reduce the taxable income whereas the case of the appellant is that they had entered into agreement with the appellant concern on 9th April, 1991 and the said concern had asked for the discount vide their letter dt. 7th Dec., 1991 and 5th Feb., 1992. During the course of assessment proceedings, the AO has not

brought any evidence on record to show that the appellant concern received payments from this concern by any other mode or there were any other transactions from which it could be inferred that the appellant had received any other benefit from this concern which was not accounted for. The case of the appellant is that they allowed the quantity discount to this concern as they felt that they could do better business with them and as they were the manufacturer and actual user of the product manufactured by the appellant concern. It was for increasing the sale that they had allowed this quantity discount to this concern which was on the basis of agreement and it was on the basis of this agreement that they allowed discount and, accordingly, received the payment.

In view of these facts, the disallowance made under the head quantity discount cannot be sustained and is deleted. Thus, the disallowance under the head rebate/discount amounting to Rs. 6,58,150 is deleted." 20. Aggrieved the Revenue has come up in second appeal contending that the deletion of the quantity discount of Rs. 5,50,990 to M/s CL Gupta & Sons was unjustified.

21. The learned Departmental Representative relied on the AO's order.

He submitted that the quantity discount paid to M/s CL Gupta & Sons was not in the interest of business and the same was not allowable because it was also excessive.

22. The learned Authorised Representative of the assesses, on the other hand, relied on the order of the learned CIT(A).

23. After considering the rival submissions and the materials on the file, we are of the view that on the facts and in the circumstances of the case and for the reasons given in the impugned appellate order the learned CIT(A) was justified in deleting the addition of Rs. 5,50,990 on account of payment of quantity discount to M/s CL Gupta & Sons, Moradabad. The said quantity discount was paid as per agreement dt.

19th April, 1991 between the assessee and M/s CL Gupta & Sons. No material was brought on record to prove that this agreement was sham.

Again no material was brought to prove that the assessee's claim that the said quantity discount was paid at the rate of Rs. 5 per kg. as per the said agreement because the said party purchased quantity exceeding 50 MT, i.e., it purchased 100 MT in the year was wrong and contrary to facts. Thus, the said quantity discount was paid on the fulfilment of the terms and conditions of the agreement by the said party. There was no material on record to show that the statement and submission of the assessee were in any way wrong. Admittedly, therefore, the said quantity discount was paid for the purpose of assessee's business.

Again no material was brought on record to show that on similar purchases by other parties the assessee had not paid similar discount.

Reference to two other parties in the impugned assessment order was not relevant because the facts about the purchases by them were not similar to the quantity of purchases by M/s CL Gupta & Sons. Moreover, there was no similar agreement with the other two parties referred by the AO in the impugned order. The learned CIT(A) found that the payment of quantity discount was supported by the agreement as well as vouchers and as such it was duly proved. We are of the view that on the facts and in the circumstances of the case, the finding of the learned CIT(A) in this regard was proper and just and no interference is called for in the same. Accordingly, we uphold his order.

24. The last ground is against the deletion of disallowance of Rs. 7,400 under the head professional fee under Section 40A(2) and 40A(12) of the Act out of payment to S/Shri Sunil Kumar Gupta, CA, SR Sharma, CA and SP Puri & Co. for consultation on income-tax, company matter, IT appeals, etc. In the first appeal, the learned CIT(A) deleted the disallowance holding that the fee paid was not un-reasonable or excessive.

25. Aggrieved the Revenue has come up in second appeal before this Tribunal.

26. After hearing both sides and considering the materials on the file, we hold that learned CIT(A) was justified in deleting the disallowance.

No material was brought on record to show that the payment was unreasonable and excessive. Accordingly, we uphold the order of the learned CIT(A).